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November 14, 2011

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

Re: Jack Kupchinskas v. PECO Energy Company
Docket No. C-2011-2253896

Dear Secretary Chiavetta:

Enclosed for filing on behalf of PECO is an original of its Motion for Judgment on the Pleadings 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.

Best Regards,

STEVENS & LEE


Michael A. Gruin

Encl.

cc: Certificate of Service
Administrative Law Judge Marlane Chestnut

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**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

JACK KUPCHINSKAS

v.

PECO ENERGY COMPANY

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:
:

DOCKET NO. C-2011-2253896

NOTICE TO PLEAD

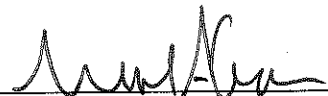
To: Jack Kupchinskas

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
Stevens & Lee
17 N. 2nd St., 16th Fl.
Harrisburg, PA 17101
Telephone: 717-255-7365
Facsimile: 610-988-0852
mag@stevenslee.com

COUNSEL FOR
PECO ENERGY COMPANY

DATE: November 14, 2011

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

JACK KUPCHINSKAS	:	
	:	
v.	:	DOCKET NO. C-2011-2253896
	:	
PECO ENERGY COMPANY	:	

MOTION FOR JUDGMENT ON THE PLEADINGS

PECO Energy Company ("PECO"), pursuant to 52 Pa. Code § 5.102, respectfully requests that your Honorable Commission dismiss the instant Complaint for failure to state a claim upon which relief can be granted.

1. On July 18, 2011, Complainant filed a Formal Complaint against Respondent, PECO, requesting PECO halt that phase-out of its winter residential heat discount. A copy of the Complainant's Formal Complaint is attached hereto as Exhibit 1.
2. PECO was served with the Formal Complaint on July 26, 2011.
3. On August 15, 2011, 2010, PECO filed an Answer, New Matter and Notice to Plead. A copy of PECO's Answer and New Matter is attached hereto as Exhibit 2. In its New Matter, PECO explained that the phase out of its residential heat rate was approved by the Commission as part of PECO's Default Service Plan Petition at Docket No. P-2008-2062739, and that Mr. Kupchinskas's Complaint must be dismissed for legal insufficiency.
4. On August 30, 2011, Mr. Kupchinskas filed his Answer to PECO's New Matter. A copy of the Answer to New Matter is attached hereto as Exhibit 3. Mr. Kupchinskas's Answer to New Matter did not deny any of the averments of PECO's New Matter.

5. The Commission's regulations at 52 Pa. Code 5.102(a) permits any party to move for summary judgment or judgment on the pleadings after the pleadings are closed, but within such time as to not delay a hearing. The presiding officer will grant the motion if the pleadings, depositions, answers to interrogatories, admissions and affidavits show that there is no genuine issue as to a material fact and that the moving party is entitled to judgment as a matter of law. 52 Pa. Code § 5.102(d)(1).

6. The moving party bears the burden of showing that no genuine issue of material fact exists and that it is entitled to judgment as a matter of law. The Commission must view the record in the light most favorable to the non-moving party, giving that party the benefit of all reasonable inferences. First Mortgage Co. of Pennsylvania v. McCall, 459 A.2d 406(Pa. Super. 1983).

7. The provision at 52 Pa. Code §5.102(c) serves judicial economy by avoiding a hearing where no factual dispute exists. If no factual issue pertinent to the resolution of the case exists, a hearing is unnecessary. Lehigh Valley Power Committee v. Pennsylvania Public Utility Commission, 563 A.2d. 557 (Pa. Cmwlth. 1989).

8. The pleadings in this case reveal that PECO is entitled to judgment as a matter of law because the Complaint fails to state a claim for which relief can be granted. The Complaint in this case requests that PECO halt the phase-out of its residential heat rate. However, as explained in New Matter, the Commission has already reviewed and approved the phase-out, and there is no legal basis to continue to require PECO to offer the residential heating rate.

9. In 1996, the Pennsylvania General Assembly enacted the Electricity Generation Customer Choice and Competition Act (Act), 66 Pa.C.S §§2801-15. The Act allows Pennsylvanians to buy electric generation supply from licensed alternative suppliers by unbundling the generation portion of electric rates from the transmission and distribution portions.

10. The Act capped the generation portion of electric rates to ease the transition to competitive markets at 1996 levels. The rate cap was initially established under Section 2804 of the Act, and, after much litigation, settlements were reached in which the rate cap would expire for all PECO customers at the end of 2010.¹

11. On September 10, 2008, PECO filed with the Commission a Petition (hereinafter referred to as the “DSP Petition”) requesting that the Commission approve PECO’s Default Service Program and Rate Mitigation Plan to establish rates, terms and conditions for the provision of default service for the period January 1, 2011, through May 31, 2014, for those customers who do not take service from an alternative electric generation supplier (EGS) or whose contracted generation is not delivered. The DSP Program is designed to ensure that PECO’s default service customers have access to a reliable supply of generation and to help them manage the transition from capped generation rates to market-priced rates that were to occur on January 1, 2011. PECO’s DSP Plan Petition was assigned Commission Docket No. P-2008-2062739.

¹The Commission has already ruled that it lacks the authority to extend the expired rate caps. See Tshudy v. PPL Electric Utilities Corp., Docket Number C-2009-2092230 (Order entered August 21, 2009) (citing 66 Pa.C.S 2804(4)(“Tshudy”).

12. The phase out of the residential heat rate was included as part of PECO's DSP Plan.

13. After extensive discovery, hearings, and the filing of testimony and rebuttal testimony in this matter, on March 10, 2009, a Joint Petition for Settlement was filed to request approval of PECO's DSP Plan as modified by the settlement.

14. By Order entered June 2, 2009 the Commission approved the Settlement and PECO's DSP Plan, as modified by the settlement.

15. Starting January 1, 2011, PECO's generation rates have reflected wholesale market prices at which PECO procured its generation supply for its customers who do not choose an alternative generation supplier. Those customers who choose an alternative supplier would pay the rates set by the supplier based on wholesale market prices.

16. As of the date of the Complaint, Complainant receives generation supply through PECO's default service program. See, PECO New Matter.

17. To the extent that Complainant challenges the phase-out of the residential heat rate any increase, the challenge must be dismissed for legal insufficiency.

18. The Commission has only those duties, powers, responsibilities and jurisdiction that 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).

19. Wholesale market-based generation rates are a federal subject matter and are regulated only by the Federal Energy Regulatory Agency (FERC). See Utilimax.com. Inc. v. PPL Energy Plus, LLC, 378 F.3d 303 (3d Cir.2004).

20. The Federal Power Act of 1935 established the Federal Power Commission (now FERC) and gave it “plenary and exclusive jurisdiction over ‘the transmission of electric energy in interstate commerce’ and ‘the sale of electric energy at wholesale in interstate commerce.’” Utilitimax.com. Inc. v. PPL Energy Plus, LLC, 273 F.Supp.2d 573, 574 (E.D.Pa.2003); 16 U.S.C. §824(b). There is no relief that the Commission may grant regarding market-based generation rates. As the Commission recognized in Tshudy, the Commission may not extend the rate caps, which expired in 2010, in order to prevent a generation rate increase.

21. Therefore, to the extent the Complaint relates to the rate cap expiration or wholesale market-based generation rates must be dismissed for legal insufficiency under 52 Pa.Code §5.101(a)(4).

22. There is a strong presumption that “the preexisting Commission approved rates are just and reasonable.” Duquesne Light Company v. Pennsylvania Public Utility Commission, 715 A.2d 540, 545 (Pa. Cmwlth. 1998).

23. To overcome the presumption, Complainant must demonstrate the existence of “recent significant changes in circumstances in the interim.” Schellhammer v. Public Utility Commission, 629 A.2d 189, 193 (Pa. Cmwlth. 1993).

24. In the absence of such a showing of “recent significant change in circumstances” by Complainant, the prior commission rate determination remains conclusive under Section 316 of the Public Utility Code, 66 Pa.C.S. §316.

25. Section 316 of the Code provides that “[w]henver the commission shall make any rule, regulation, finding, determination or order, the same shall be *prima*

facie evidence of the facts found and shall remain conclusive upon all parties affected thereby....”

26. Neither the Complaint nor the Answer to New Matter filed by the Complainant contain any assertion of recent significant changes in circumstances that would allow Complainant to overcome the presumption that PECO’s rates are just and reasonable.

27. The Commission approved PECO’s Default Service Plan and the phasing out of the residential heat rate by its Order entered June 2, 2009

28. The Commission’s approval is *prima facie* evidence of the reasonableness of PECO’s rates. 66 Pa.C.S. §316; Duquesne Light Company, at 545. Therefore, under Section 316 of the Public Utility Code, the Commission’s approval of PECO’s phase out of the residential heat rate is conclusive and binding.

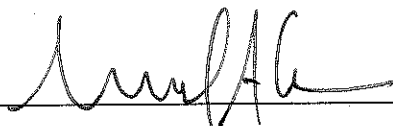
29. For these reasons, Complainant’s challenge to PECO elimination of the residential heat rate must fail for legal insufficiency under 52 Pa.Code §5.101(a)(4).

30. As set forth in its New Matter, PECO has informed its residential heat customers of the phase-out of the rate, and has programs in place to assist customers who are affected by the end of the residential heat rate. PECO has advised customers that they can sign up for budget billing, PECO has encouraged customers to explore energy savings strategies and rebate opportunities, and PECO has directed customers to the Commission’s “PA Power Switch” website and encouraged them to shop for competitive electric generation providers. PECO has also made customers aware of future pricing options that can help them save money, such as the Smart Time Pricing which is scheduled to become available in 2012.

REQUEST FOR RELIEF

WHEREFORE, for all of the reasons stated herein, PECO respectfully requests that your Honorable Commission dismiss the instant complaint with prejudice.

Respectfully submitted,



Michael A. Gruin (I.D. No. 78625)
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Harrisburg, PA 17101
Tel. (717) 255-7365
Fax (610) 988-0852
mag@stevenslee.com

Tishekia Williams
PECO Energy Company
2301 Market Street, S23-1
PO Box 8699
Philadelphia, PA 19101-8699
(215) 841-6841
Fax: 215.568.3389
tishekia.williams@exeloncorp.com

Counsel for PECO Energy Company

Dated: November 14, 2011

PENNSYLVANIA PUBLIC UTILITY COMMISSION

CASE #
BCS 2850738

Formal Complaint Form

Please print in ink or type.

1. CUSTOMER (COMPLAINANT) INFORMATION

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

Name JACK KUPCHINSKAS
Street/P.O. Box 4152 TERMAN DRIVE
City DOYLESTOWN State PA Zip 18902
County BUCKS

Daytime Telephone Number Where We Can Contact You: (215) 230-3630

E-mail Address (optional): JACKKUP@VERIZON.NET

Utility Account Number _____
(from your bill)

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

Name _____
Street/P.O. Box _____
City _____ State _____ Zip _____

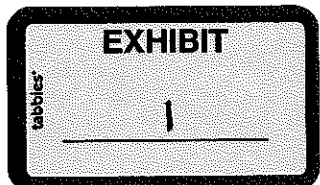
2. FULL NAME OF UTILITY COMPANY (RESPONDENT):

PECO

3. TYPE OF UTILITY (check one)

- ELECTRIC
- GAS
- WATER
- STEAM HEAT
- WASTE WATER
- MOTOR CARRIER

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SECRETARY'S BUREAU



TELEPHONE
(local, long distance)

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

4. COMPLAINT (check one)

A. In general, what is your complaint?

I want to oppose the company's proposed rate increase.

There are incorrect charges on my bill.

There is a reliability, safety or quality problem with my utility service.

I received a notice that my utility service is being terminated.

I would like a payment agreement.

Other (explain).

B. State the facts of your complaint.

Include any specific dates, times or places that may be important. If the complaint is about a bill, tell us about any charges that you believe are not correct. Use additional paper if you need more space. Provide copies of all relevant documents you believe will support your complaint.

I AM A RESIDENTIAL ELECTRIC HEAT CUSTOMER. PECO IS ELIMINATING THE WINTER DISCOUNT WHICH WILL RESULT IN THE DOUBLING OF MY COST TO BUY ELECTRICITY. THIS WILL INCREASE MY WINTER BILLS BY HUNDREDS OF DOLLARS / MONTH.

I CANNOT AFFORD THIS INCREASE AS I AM RETIRED & ON A PENSION & SOCIAL SECURITY.
(MY FEBRUARY BILL IS ATTACHED WITH EXPLANATION.)

5. RELIEF

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

MAINTAIN THE DISCOUNT OR COME UP WITH A LOWER RATE FOR HIGH USAGE RESIDENTIAL ELECTRIC HEAT CUSTOMERS.

AT ONE TIME ELECTRIC HEAT WAS PASSED AS AN ENVIRONMENTAL WAY TO HEAT. — GREEN ENERGY!!

PLEASE HELP WITH THIS

THANK YOU
J. E. Kephau

215 230-3630

PA P.U.C.
SECRETARY'S BUREAU

2011 JUL 18 AH10:36

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6. PROTECTION FROM ABUSE

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

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

YES ?
NO ?

7. PRIOR UTILITY CONTACT

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

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

YES (includes appeals of BCS determinations) ?
NO ?

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

PECO TOLD ME THE PUC DETERMINES THE RATE - THEY CAN'T HELP!!

8. LEGAL REPRESENTATION (IF ANY)

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

Lawyer's Name _____

Street _____

City _____ State _____ Zip _____

Area Code/Phone Number _____

E-mail Address (If Known) _____

9. VERIFICATION AND SIGNATURE

You must print or type your name below on the line provided for the verification paragraph, and you must sign and date (in ink) this form on the lines provided.

Verification: I, JACK RUPCHINSKAS, hereby state that the facts above set forth are true and correct (or are true and correct to the best of my knowledge, information and belief) and that I expect to be able to prove the same at a hearing held in this matter. I understand that the statements herein are made subject to the penalties of 18 Pa. C.S. § 4904 (relating to unsworn falsification to authorities).

J. Rupchinskas (Signature) 7/12/2011 (Date)

Title of authorized employee or officer

10. FILING

Please return the completed form to one of the addresses listed below:

If using U.S. Postal Service:

If using overnight delivery service:

Secretary Pennsylvania Public Utility Commission P.O. Box 3265 Harrisburg, PA 17105-3265	Secretary Pennsylvania Public Utility Commission 400 North Street Commonwealth Keystone Building, 2 nd Floor Harrisburg, Pennsylvania 17120
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Facsimiles and/or electronic filings of the complaint will not be accepted.

If you have any questions about filling out this form, please contact the Secretary's Bureau at 717-772-7777.

Keep a copy of your complaint for your records.

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

Name: JACK E KUPCHINSKAS
Account Number: 36613-01404
Phone Number: 215-230-3630
Service Address: 4152 TERSHER DR, DOYLESTOWN

Billing Summary

02/24/2011

Bill Date
Thank you for your payment of \$635.03

Current Period Charges

Electric

\$550.21
\$550.21
\$550.21

Total amount due on 03/18/2011

General Information

Next scheduled meter reading: March 26, 2011
PECO, 2301 Market St, Philadelphia, PA 19103-1380. If you have any questions or concerns, please call 1-800-494-4000 before the due date.

- Customer Self Service - Manage Your Account 24/7
- www.peco.com/ebill - Go paperless: receive and pay your bill
- www.peco.com/service - Start, stop and transfer your service
- www.peco.com/SmartIdeas - Save energy and money
- Pay by phone with credit/debit card at 1-877-432-9384 (\$3.50 fee)

Message Center

New charges contain estimated total state taxes of \$39.83, including \$33.34 for State Gross Receipts Tax.

Your electric price to compare is \$0.0583 per kWh.

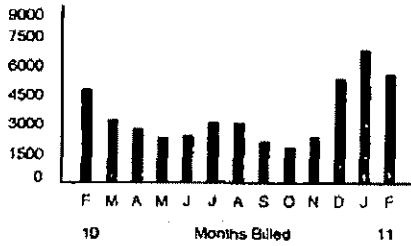
If you were on our budget billing program, your bill this month would have been \$365.00. To begin using budget billing, please pay this amount rather than the amount shown on your bill. Your account will automatically be placed on budget billing.

Name: JACK E KUPCHINSKAS
Account Number: 36613-01404

Meter Information								
Read Date	Meter Number	Load Type	Reading Type	Meter Reading		Difference	Multiplier X	Usage
				Previous	Present			
02/23	021543848	General Service	Tot kWh	42107 Actual	47622 Actual	5515	1	5515
Total kWh Used		5,515						

Electric Residential Heating Service - Current Period Detail				Service 01/25/2011 to 02/23/2011 - 29 days	
Customer charge					\$7.25
Generation Charges	600 kWh	X	\$0.09230		55.38
Generation Charges	4,915 kWh	X	0.04840 *		237.89
Alt. Energy Portfolio Standard	5,515 kWh	X	0.00120		6.62
Transmission Charges	5,515 kWh	X	0.00390		21.51
Distribution Charges	5,515 kWh	X	0.04020		221.70
State Tax Adjustment					-0.14
Total Current Charges					\$550.21

13-Month Usage (Total kWh)



Your Usage Profile

Period	Usage	Avg Daily Usage	Days	Avg Daily Temp
Current Month	5,515	190.1	29	35
Last Month	8,742	192.6	35	30
Last Year	4,740	163.4	29	32
Avg kWh per Month				3,349
Total Annual kWh Usage				40,189

** winter Rate*

The new rate (undiscounted) would result in 4915 kWh X .0923 = 453.65 instead of 4915 kWh X .0484 = 237.89

~~215.76~~ INCREASE

This bill for one month would be 550.21 + 215.71 = \$765.92

DO NOT MAIL THIS PORTION WITH YOUR PAYMENT

Help!!

USA FIRST CLASS FOREVER



USA FIRST CLASS FOREVER



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Commission

030 2011 JUL 18 11:36

Pennsylvania Public Utility

P.O. Box 3265

Harrisburg, PA

710-880-3265

17108803265

Mr. Jack Kupchinskas
4152 Tersher Dr
Doylestown, PA 18902



~~030 2011 JUL 18 11:36~~

ATT: SECRETARY

STEVENS & LEE
LAWYERS & CONSULTANTS

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Harrisburg, PA 17101
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Email: mag@stevenslee.com
Direct Fax: (610) 988-0852

August 15, 2011

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

Re: Jack Kupchinskas v. PECO Energy Company
Docket No. C-2011-2253896

Dear Secretary Chiavetta:

Enclosed for filing on behalf of PECO is an original of its Answer and New Matter in response to the Complaint 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.

Best Regards,

STEVENS & LEE


Michael A. Grum

Encl.

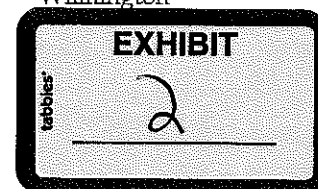
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Your filing has been electronically received. Upon review of the filing for conformance with the Commission's filing requirements, a notice will be issued acknowledging such compliance and assigning a Docket Number. The matter will receive the attention of the Commission and you will be advised if any further action is required on your part.

Print this page for your records. The date filed on will be the current day if the filing occurs on a business day before or at 4:30 PM Harrisburg, PA time. It will be the next business day if the filing occurs after 4:30 PM Harrisburg, PA time or on weekends or holidays.

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Description:	
Transmission Date:	8/15/2011 10:28:18 AM
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eFiling Confirmation Number:	1468757

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File Name	Document Class	Document Type
PECO Answer and New Matter to Kupchinskas Complaint.pdf	Communication	Answer to Formal Complaint

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**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

JACK KUPCHINSKAS
Complainant

v.

PECO ENERGY COMPANY
Respondent

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Docket No. C-2011-2253896

NOTICE TO PLEAD

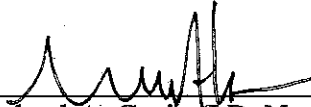
To: Jack Kupchinskas

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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 Answer and New Matter could result in the dismissal of your case.

STEVENS & LEE


Michael A. Gruin (I.D. No. 78625)
17 N. 2nd St., 16th Floor
Harrisburg, PA 17101
Tel. (717) 255-7365
Fax (610) 988-0852
COUNSEL FOR PECO

August 15, 2011

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

JACK KUPCHINSKAS
Complainant

v.

PECO ENERGY COMPANY
Respondent

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Docket No. C-2011-2253896

**ANSWER AND NEW MATTER OF RESPONDENT,
PECO ENERGY COMPANY**

On July 26, 2011, PECO Energy Company (PECO) was served with a formal complaint from Jack Kupchinskas (Complainant), in the above captioned Docket Number. Pursuant to 52 Pa Code §5.61, PECO hereby responds as follows:

1. Admitted.
2. Admitted
3. Admitted.
4. Denied. PECO denies that there are any proposed rate increases pending before the Commission. Further answering, the phasing out of PECO's residential electric heat rate was approved by the Pennsylvania Public Utility Commission as part of PECO's Default Service Program and Rate Mitigation Plan. As such, the phasing out of the residential heat rate is just, lawful, and reasonable. To the extent that paragraph 4 contains additional averments, such averments are denied.

5. Paragraph 5 is a request for relief for which no answer is required. Nonetheless, PECO denies that it should be required to maintain its residential electric

heat rate or devise a replacement discounted rate for electric heat. The Commission has already reviewed and approved PECO's phasing out of the residential heat rate, and there is no legitimate basis to reverse that approval.

6. PECO is without sufficient information to admit or deny this statement.
7. Admitted.
8. Admitted.

NEW MATTER

9. PECO incorporates by reference responses contained in Paragraphs 1 through 8 above as though fully set forth at length.

10. PECO is represented in this matter by:

Michael A. Gruin (I.D. No. 78625)
Dana Pirone Carosella (I.D. No. 57221)
17 North 2nd Street, 16th Floor
Harrisburg, PA 17101
Tel. (717) 255-7365
Fax (610) 988-0852
mag@stevenslee.com

and

Tishekia Williams
PECO Energy Company
2301 Market Street, S23-1
PO Box 8699
Philadelphia, PA 19101-8699
(215) 841-6841
Fax: 215.568.3389
tishekia.williams@exeloncorp.com

11. The Complainant checked the Complaint form box to indicate that he wants to oppose PECO's proposed rate increase. To the extent that Complainant challenges a "proposed rate increase," that claim must be dismissed because PECO

currently has no proposed rate increase pending before the Commission. Simply, there is no proposed rate increase about which to complain. Therefore, this claim must be dismissed because the subject of the claim does not exist.

12. The Complaint also specifically objects to the elimination of PECO's residential heat rate. To the extent that the complaint challenges PECO's phasing out of the residential heating rate, the Complaint should be dismissed for legal insufficiency.

13. In 1996, the Pennsylvania General Assembly enacted the Electricity Generation Customer Choice and Competition Act (Act), 66 Pa.C.S §§2801-15. The Act allows Pennsylvanians to buy electric generation supply from licensed alternative suppliers by unbundling the generation portion of electric rates from the transmission and distribution portions.

14. The Act capped the generation portion of electric rates to ease the transition to competitive markets at 1996 levels. The rate cap was initially established under Section 2804 of the Act, and, after much litigation, settlements were reached in which the rate cap would expire for all PECO customers at the end of 2010.¹

15. On September 10, 2008, PECO filed with the Commission a Petition (DSP Petition) requesting that the Commission approve PECO's Default Service Program and Rate Mitigation Plan to establish rates, terms and conditions for the provision of default service for the period January 1, 2011, through May 31, 2014, for those customers who do not take service from an alternative electric generation supplier (EGS) or whose

¹The Commission has already ruled that it lacks the authority to extend the expired rate caps. See *Tshudy v. PPL Electric Utilities Corp.*, Docket Number C-2009-2092230 (Order entered August 21, 2009) (citing 66 Pa.C.S 2804(4)).

contracted generation is not delivered. The DSP Program is designed to ensure that PECO's default service customers have access to a reliable supply of generation and to help them manage the transition from capped generation rates to market-priced rates that were to occur on January 1, 2011. PECO's DSP Plan Petition was assigned Commission Docket No. P-2008-2062739.

16. The phase out of the residential heat rate was included as part of PECO's DSP Plan.

17. After extensive discovery, hearings, and the filing of testimony and rebuttal testimony in this matter, on March 10, 2009, a Joint Petition for Settlement was filed to request approval of PECO's DSP Plan as modified by the settlement.

18. By Order entered June 2, 2009 the Commission approved the Settlement and PECO's DSP Plan, as modified by the settlement.

19. Starting January 1, 2011, PECO's generation rates have reflected wholesale market prices at which PECO procured its generation supply for its customers who do not choose an alternative generation supplier. Those customers who choose an alternative supplier would pay the rates set by the supplier based on wholesale market prices.

20. As of the date of the Complaint, Complainant receives generation supply through PECO's default service program.

21. To the extent that Complainant challenges the phase-out of the residential heat rate any increase, the challenge must be dismissed for legal insufficiency.

22. The Commission has only those duties, powers, responsibilities and jurisdiction that 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).

23. Wholesale market-based generation rates are a federal subject matter and are regulated only by the Federal Energy Regulatory Agency (FERC). See *Utilimax.com. Inc. v. PPL Energy Plus, LLC*, 378 F.3d 303 (3d Cir.2004).

24. The Federal Power Act of 1935 established the Federal Power Commission (now FERC) and gave it “plenary and exclusive jurisdiction over ‘the transmission of electric energy in interstate commerce’ and ‘the sale of electric energy at wholesale in interstate commerce.’” *Utilimax.com. Inc. v. PPL Energy Plus, LLC*, 273 F.Supp.2d 573, 574 (E.D.Pa.2003); 16 U.S.C. §824(b).

25. There is no relief that the Commission may grant regarding market-based generation rates. As the Commission recognized in *Tshudy*, the Commission may not extend the rate caps, which expired in 2010, in order to prevent a generation rate increase.

26. Therefore, to the extent the Complaint relates to the rate cap expiration or wholesale market-based generation rates must be dismissed for legal insufficiency under 52 Pa.Code §5.101(a)(4).

27. There is a strong presumption that “the preexisting Commission approved rates are just and reasonable.” *Duquesne Light Company v. Pennsylvania Public Utility Commission*, 715 A.2d 540, 545 (Pa. Cmwlth. 1998).

28. To overcome the presumption, Complainant must demonstrate the existence of “recent significant changes in circumstances in the interim.” *Schellhammer v. Public Utility Commission*, 629 A.2d 189, 193 (Pa. Cmwlth. 1993).

29. In the absence of such a showing of “recent significant change in circumstances” by Complainant, the prior commission rate determination remains conclusive under Section 316 of the Public Utility Code, 66 Pa.C.S. §316.

30. Section 316 of the Code provides that “[w]henver the commission shall make any rule, regulation, finding, determination or order, the same shall be *prima facie* evidence of the facts found and shall remain conclusive upon all parties affected thereby....”

31. The complaint makes no assertion whatsoever of recent significant changes in circumstances that would allow Complainant to overcome the presumption that PECO’s rates are just and reasonable.

32. The Commission approved PECO’s Default Service Plan and the phasing out of the residential heat rate by its Order entered June 2, 2009

33. The Commission’s approval is *prima facie* evidence of the reasonableness of PECO’s rates. 66 Pa.C.S. §316; *Duquesne Light Company*, at 545. Therefore, under Section 316 of the Public Utility Code, the Commission’s approval of PECO’s phase out of the residential heat rate is conclusive and binding.

34. For these reasons, Complainant’s challenge to PECO elimination of the residential heat rate must fail for legal insufficiency under 52 Pa.Code §5.101(a)(4).

35. PECO has informed its residential heat customers of the phase-out of the rate, and has programs in place to assist customers who are affected by the end of the residential heat rate. PECO has advised customers that they can sign up for budget billing, PECO has encouraged customers to explore energy savings strategies and rebate opportunities, and PECO has directed customers to the Commissions “PA Power Switch”

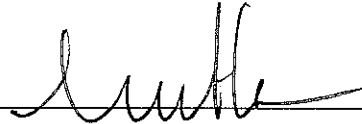
website and encouraged them to shop for competitive electric generation providers.

PECO has also made customers aware of future pricing options that can help them save money, such as the Smart Time Pricing which is scheduled to become available in 2012.

REQUEST FOR RELIEF

WHEREFORE, for all of the reasons stated herein, PECO respectfully requests that your Honorable Commission dismiss the instant complaint with prejudice.

Respectfully submitted,



Michael A. Gruin (I.D. No. 78625)
Dana Pirone Carosella (I.D. No. 57221)
17 N. 2nd St., 16th Fl.
Harrisburg, PA 17101
Tel. (717) 255-7365
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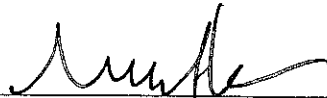
Counsel for PECO Energy Company

Dated: August 15, 2011

Commonwealth of Pennsylvania :
County of Dauphin : SS

AFFIDAVIT

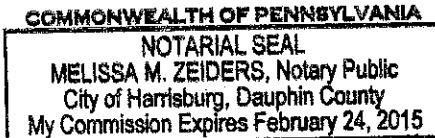
I, Michael A. Gruin, being duly sworn according to law, depose and say I am agent of PECO Energy Company and have been authorized to make this affidavit on its behalf and that the facts above set forth are true and correct to the best of my knowledge, information and belief, and PECO Energy Company expects 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
15th day of August, 2011


Notary

My Commission Expires:



**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

JACK KUPCHINSKAS
Complainant

v.

PECO ENERGY COMPANY
Respondent

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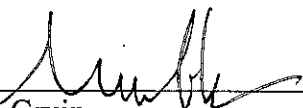
Docket No. C-2011-2253896

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of the foregoing Answer and New Matter upon the party 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

Jack Kupchinskas
4152 Tersher Dr.
Doylestown, PA 18902



Michael Gruin

DATED: August 15, 2011

August 30, 2011

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

RECEIVED
SEP 2 2011

STEVENS & LEE

Re: Docket No. C-2011-2253896

Attached please find the history of my complaint to the PUC and the response by PECO to the issue of the elimination of the "Residential Electric Heat Rates" effective in January 2012.

I will list the major points and actions I have tried to alleviate this financially devastating issue.

1. As can be seen from my typical Winter bill from PECO and the monthly and annual usage from that bill, my projected cost per month (Winter months) will increase over \$200.00 monthly or over 40%.
2. I am not poor, but live on a pension and Social Security that does not increase each month. I keep my winter thermostat at 68 degrees. I cannot lower it much more!
3. My street does not have gas available so my choice would be converting to oil heat. This is "Dirty" heat and against all the environmental concerns we hear so much about.
4. Tens of thousands of people in Bucks & Montgomery counties were told electric was the clean energy and were encouraged to install "Heat Pumps" when building our houses. The electric rates were set to compensate for the "High usage & High Cost" of this form of heat.
5. None of the alternative Suppliers offer a competitive "Home Heating electric Rate" to what PECO now offers.

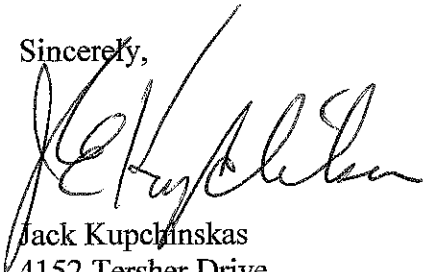
I have talked at length with PECO, Public Utility Commission the Office of Consumer Advocate in Harrisburg, my State Senators office and my State Representatives Office.



This travesty cannot stand. We cannot afford this exorbitant increase in this environment.

Other than a "Class Action Lawsuit" or public demonstrations/petitions, I am at a loss as to what can be done to forestall or remediate this impending financial disaster.

Sincerely,



Jack Kupchinskas
4152 Tersher Drive
Doylestown, Pa. 18902

215-230-3630

jackkup@verizon.net

cc: Office of Consumer Advocate, Harrisburg
Michael Gruin, Stevens & Lee Lawyers ✓
Tishekia Williams, PECO Energy
Chuck McIllinney, Pa. State Senate
Margarita Quinn, Pa. State Assembly
Philadelphia Inquirer, Philadelphia

STEVENS & LEE
LAWYERS & CONSULTANTS

17 North Second Street
16th Floor
Harrisburg, PA 17101
www.stevenslee.com

Direct Dial: (717) 255-7365
Email: mag@stevenslee.com

August 15, 2011

Jack Kupchinkas
4152 Tersher Dr.
Doylestown, PA 18902

RE: Jack Kupchinkas v. PECO Energy Company
Docket No. C-2011-2253896

Dear Mr. Kupchinkas:

Enclosed is a copy of PECO Energy Company's Answer and New Matter to the formal complaint filed by you 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. You are required to file a response to PECO's Answer and New Matter. You should review the Notice to Plead attached to the Answer for information on how to respond.

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. If you have any questions or concerns at any time, please do not hesitate to contact me at the number listed above.

Best Regards,

STEVENS & LEE


Michael A. Grum

Encl.

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

A PROFESSIONAL CORPORATION

7/15/2011

Formal Complaint Form

Please print in ink or type.

1. CUSTOMER (COMPLAINANT) INFORMATION

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

Name JACK KUPCHINSKAS

Street/P.O. Box 4152 TERSBAR DRIVE

City DOYLESTOWN State PA Zip 18902

County BUCKS

Daytime Telephone Number Where We Can Contact You: (215) 230-3630

E-mail Address (optional): JACKKUP@VERIZON.NET

Utility Account Number _____
(from your bill)

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

Name _____

Street/P.O. Box _____

City _____ State _____ Zip _____

2. FULL NAME OF UTILITY COMPANY (RESPONDENT):

PECO

3. TYPE OF UTILITY (check one)

ELECTRIC

STEAM HEAT

GAS

WASTE WATER

WATER

MOTOR CARRIER

TELEPHONE
(local, long distance)

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

4. COMPLAINT (check one)

A. In general, what is your complaint?

I want to oppose the company's proposed rate increase.

There are incorrect charges on my bill.

There is a reliability, safety or quality problem with my utility service.

I received a notice that my utility service is being terminated.

I would like a payment agreement.

Other (explain).

B. State the facts of your complaint.

Include any specific dates, times or places that may be important. If the complaint is about a bill, tell us about any charges that you believe are not correct. Use additional paper if you need more space. Provide copies of all relevant documents you believe will support your complaint.

I AM A RESIDENTIAL ELECTRIC HEAT
CUSTOMER. PECO IS ELIMINATING THE WINTER
DISCOUNT WHICH WILL RESULT IN THE DOUBLING
OF MY COST TO BUY ELECTRICITY. THIS
WILL INCREASE MY WINTER BILLS BY
HUNDREDS OF DOLLARS / MONTH.

I CANNOT AFFORD THIS INCREASE AS I
AM RETIRED & ON A PENSION & SOCIAL SECUR.

5. RELIEF

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

MAINTAIN THE DISCOUNT OR COME UP WITH A LOWER RATE FOR HIGH USAGE RESIDENTIAL ELECTRIC HEAT CUSTOMERS.

AT ONE TIME ELECTRIC HEAT WAS PASSED AS AN ENVIRONMENTAL WAY TO HEAT. — GREEN ENERGY!!

PLEASE HELP WITH THIS

Thank you

J. E. Kephart

215 230-3630

6. PROTECTION FROM ABUSE

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

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

YES
NO

7. PRIOR UTILITY CONTACT

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

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

YES (includes appeals of BCS determinations)
NO

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

PECO TOLD ME THE PUC DETERMINED THE RATE - THEY CAN'T KEEP!!

8. LEGAL REPRESENTATION (IF ANY)

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

Lawyer's Name _____

Street _____

City _____ State _____ Zip _____

Area Code/Phone Number _____

E-mail Address (If Known) _____

9. VERIFICATION AND SIGNATURE

You must print or type your name below on the line provided for the verification paragraph, and you must sign and date (in ink) this form on the lines provided.

Verification:
I JACK KUPCHINSKAS, hereby state that the facts above set forth are true and correct (or are true and correct to the best of my knowledge, information and belief) and that I expect to be able to prove the same at a hearing held in this matter. I understand that the statements herein are made subject to the penalties of 18 Pa. C.S. § 4904 (relating to unsworn falsification to authorities).

J. Kupchinskas (Signature) 7/12/2011 (Date)

Title of authorized employee or officer

10. FILING

Please return the completed form to one of the addresses listed below:

If using U.S. Postal Service:

If using overnight delivery service:

Secretary Pennsylvania Public Utility Commission P.O. Box 3265 Harrisburg, PA 17105-3265	Secretary Pennsylvania Public Utility Commission 400 North Street Commonwealth Keystone Building, 2 nd Floor Harrisburg, Pennsylvania 17120
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Facsimiles and/or electronic filings of the complaint will not be accepted.

If you have any questions about filling out this form, please contact the Secretary's Bureau at 717-772-7777.

Keep a copy of your complaint for your records.

3/11/11
Sylvan's
Associates

Name: JACK E KUPCHINSKAS
Account Number: 36613-01404

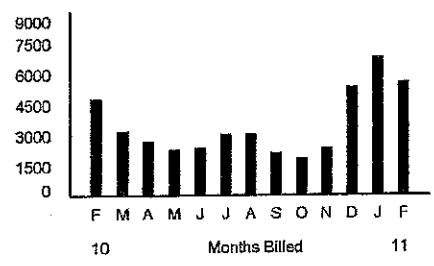
Meter Information								
Read Date	Meter Number	Load Type	Reading Type	Meter Reading		Difference	Multiplier X	Usage
				Previous	Present			
02/23	021543648	General Service	Tot kWh	42107 Actual	47622 Actual	5515	1	5515

Total kWh Used 5,515

Electric Residential Heating Service - Current Period Detail Service 01/25/2011 to 02/23/2011 - 29 days

Customer charge					\$7.25
Generation Charges	600 kWh	X	\$0.09230		55.38
Generation Charges	4,915 kWh	X	0.04840 *		237.89
Alt. Energy Portfolio Standard	5,515 kWh	X	0.00120		6.62
Transmission Charges	5,515 kWh	X	0.00390		21.51
Distribution Charges	5,515 kWh	X	0.04020		221.70
State Tax Adjustment					-0.14
Total Current Charges					\$550.21

13-Month Usage (Total kWh)



Your Usage Profile

Period	Usage	Avg Daily Usage	Days	Avg Daily Temp
Current Month	5,515	190.1	29	35
Last Month	6,742	192.6	35	30
Last Year	4,740	163.4	29	32

Avg kWh per Month	3,349
Total Annual kWh Usage	40,199

* winter rate

The new rate (undiscounted) would raise:

IN 4915 kWh X .0923 = 453.65 INSTEAD
 OF 4915 kWh X .0484 = 237.89
~~215.76~~ INCREASE

This bill for ONE MONTH would
 BE 550.21 + 215.71 = \$765.92

DO NOT MAIL THIS PORTION WITH YOUR PAYMENT

Help!





Pennsylvania Public Utility Commission

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Your filing has been electronically received. Upon review of the filing for conformance with the Commission's filing requirements, a notice will be issued acknowledging such compliance and assigning a Docket Number. The matter will receive the attention of the Commission and you will be advised if any further action is required on your part.

Print this page for your records. The date filed on will be the current day if the filing occurs on a business day before or at 4:30 PM Harrisburg, PA time. It will be the next business day if the filing occurs after 4:30 PM Harrisburg, PA time or on weekends or holidays.

The PUC is temporarily requiring all eFilers to submit one paper copy of all documents that are filed electronically. This paper copy should be submitted to the Secretary's Bureau within 3 business days of submitting the electronic filing online. Please print a copy of this page and attach it to the paper copy of your filing as the first page.

eFiling Confirmation	
Docket Number:	C-2011-2253896
Description:	
Transmission Date:	8/15/2011 10:28:18 AM
Filed On:	8/15/2011 10:28:18 AM
eFiling Confirmation Number:	1468757

Uploaded File List

File Name	Document Class	Document Type
PECO Answer and New Matter to Kupchinskas Complaint.pdf	Communication	Answer to Formal Complaint

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Advocate: (717) 783-5648

KEVIN - 800 684-6560

MEILLANNEY
215 489-5000

MARGIT QUINN
215 489-2126

DIANE

OFFICE OF CONS
555 Walnut Street
5TH Floor
Forum Place
Harrisburg PA
17101

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

JACK KUPCHINSKAS
Complainant

v.

PECO ENERGY COMPANY
Respondent

Docket No. C-2011-2253896

NOTICE TO PLEAD

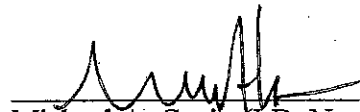
To: Jack Kupchinkas

You are hereby notified to file a written response to the attached Answer and New Matter of PECO within 20 days from the date of service of this notice. If you do not file a written response denying or correcting the enclosed New Matter within 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 responses to New Matter, 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 Answer and New Matter could result in the dismissal of your case.

STEVENS & LEE


Michael A. Gruin (I.D. No. 78625)
17 N. 2nd St., 16th Floor
Harrisburg, PA 17101
Tel. (717) 255-7365
Fax (610) 988-0852
COUNSEL FOR PECO

August 15, 2011

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

JACK KUPCHINSKAS
Complainant

v.

PECO ENERGY COMPANY
Respondent

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:

Docket No. C-2011-2253896

**ANSWER AND NEW MATTER OF RESPONDENT,
PECO ENERGY COMPANY**

On July 26, 2011, PECO Energy Company (PECO) was served with a formal complaint from Jack Kupchinkas (Complainant), in the above captioned Docket Number. Pursuant to 52 Pa Code §5.61, PECO hereby responds as follows:

1. Admitted.
2. Admitted
3. Admitted.

4. Denied. PECO denies that there are any proposed rate increases pending before the Commission. Further answering, the phasing out of PECO's residential electric heat rate was approved by the Pennsylvania Public Utility Commission as part of PECO's Default Service Program and Rate Mitigation Plan. As such, the phasing out of the residential heat rate is just, lawful, and reasonable. To the extent that paragraph 4 contains additional averments, such averments are denied.

5. Paragraph 5 is a request for relief for which no answer is required.

Nonetheless, PECO denies that it should be required to maintain its residential electric

heat rate or devise a replacement discounted rate for electric heat. The Commission has already reviewed and approved PECO's phasing out of the residential heat rate, and there is no legitimate basis to reverse that approval.

6. PECO is without sufficient information to admit or deny this statement.
7. Admitted.
8. Admitted.

NEW MATTER

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10. PECO is represented in this matter by:

Michael A. Gruin (I.D. No. 78625)
Dana Pirone Carosella (I.D. No. 57221)
17 North 2nd Street, 16th Floor
Harrisburg, PA 17101
Tel. (717) 255-7365
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and

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PO Box 8699
Philadelphia, PA 19101-8699
(215) 841-6841
Fax: 215.568.3389
tishekia.williams@exeloncorp.com

11. The Complainant checked the Complaint form box to indicate that he wants to oppose PECO's proposed rate increase. To the extent that Complainant challenges a "proposed rate increase," that claim must be dismissed because PECO

currently has no proposed rate increase pending before the Commission. Simply, there is no proposed rate increase about which to complain. Therefore, this claim must be dismissed because the subject of the claim does not exist.

12. The Complaint also specifically objects to the elimination of PECO's residential heat rate. To the extent that the complaint challenges PECO's phasing out of the residential heating rate, the Complaint should be dismissed for legal insufficiency.

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14. The Act capped the generation portion of electric rates to ease the transition to competitive markets at 1996 levels. The rate cap was initially established under Section 2804 of the Act, and, after much litigation, settlements were reached in which the rate cap would expire for all PECO customers at the end of 2010.¹

15. On September 10, 2008, PECO filed with the Commission a Petition (DSP Petition) requesting that the Commission approve PECO's Default Service Program and Rate Mitigation Plan to establish rates, terms and conditions for the provision of default service for the period January 1, 2011, through May 31, 2014, for those customers who do not take service from an alternative electric generation supplier (EGS) or whose

¹The Commission has already ruled that it lacks the authority to extend the expired rate caps. See *Tshudy v. PPL Electric Utilities Corp.*, Docket Number C-2009-2092230 (Order entered August 21, 2009) (citing 66 Pa.C.S 2804(4)).

contracted generation is not delivered. The DSP Program is designed to ensure that PECO's default service customers have access to a reliable supply of generation and to help them manage the transition from capped generation rates to market-priced rates that were to occur on January 1, 2011. PECO's DSP Plan Petition was assigned Commission Docket No. P-2008-2062739.

16. The phase out of the residential heat rate was included as part of PECO's DSP Plan.

17. After extensive discovery, hearings, and the filing of testimony and rebuttal testimony in this matter, on March 10, 2009, a Joint Petition for Settlement was filed to request approval of PECO's DSP Plan as modified by the settlement.

18. By Order entered June 2, 2009 the Commission approved the Settlement and PECO's DSP Plan, as modified by the settlement.

19. Starting January 1, 2011, PECO's generation rates have reflected wholesale market prices at which PECO procured its generation supply for its customers who do not choose an alternative generation supplier. Those customers who choose an alternative supplier would pay the rates set by the supplier based on wholesale market prices.

20. As of the date of the Complaint, Complainant receives generation supply through PECO's default service program.

21. To the extent that Complainant challenges the phase-out of the residential heat rate any increase, the challenge must be dismissed for legal insufficiency.

22. The Commission has only those duties, powers, responsibilities and jurisdiction that 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).

23. Wholesale market-based generation rates are a federal subject matter and are regulated only by the Federal Energy Regulatory Agency (FERC). See *Utilimax.com Inc. v. PPL Energy Plus, LLC*, 378 F.3d 303 (3d Cir.2004).

24. The Federal Power Act of 1935 established the Federal Power Commission (now FERC) and gave it “plenary and exclusive jurisdiction over ‘the transmission of electric energy in interstate commerce’ and ‘the sale of electric energy at wholesale in interstate commerce.’” *Utilimax.com Inc. v. PPL Energy Plus, LLC*, 273 F.Supp.2d 573, 574 (E.D.Pa.2003); 16 U.S.C. §824(b).

25. There is no relief that the Commission may grant regarding market-based generation rates. As the Commission recognized in *Tshudy*, the Commission may not extend the rate caps, which expired in 2010, in order to prevent a generation rate increase.

26. Therefore, to the extent the Complaint relates to the rate cap expiration or wholesale market-based generation rates must be dismissed for legal insufficiency under 52 Pa.Code §5.101(a)(4).

27. There is a strong presumption that “the preexisting Commission approved rates are just and reasonable.” *Duquesne Light Company v. Pennsylvania Public Utility Commission*, 715 A.2d 540, 545 (Pa. Cmwlth. 1998).

28. To overcome the presumption, Complainant must demonstrate the existence of “recent significant changes in circumstances in the interim.” *Schellhammer v. Public Utility Commission*, 629 A.2d 189, 193 (Pa. Cmwlth. 1993).

29. In the absence of such a showing of “recent significant change in circumstances” by Complainant, the prior commission rate determination remains conclusive under Section 316 of the Public Utility Code, 66 Pa.C.S. §316.

30. Section 316 of the Code provides that “[w]henver the commission shall make any rule, regulation, finding, determination or order, the same shall be *prima facie* evidence of the facts found and shall remain conclusive upon all parties affected thereby....”

31. The complaint makes no assertion whatsoever of recent significant changes in circumstances that would allow Complainant to overcome the presumption that PECO’s rates are just and reasonable.

32. The Commission approved PECO’s Default Service Plan and the phasing out of the residential heat rate by its Order entered June 2, 2009

33. The Commission’s approval is *prima facie* evidence of the reasonableness of PECO’s rates. 66 Pa.C.S. §316; *Duquesne Light Company*, at 545. Therefore, under Section 316 of the Public Utility Code, the Commission’s approval of PECO’s phase out of the residential heat rate is conclusive and binding.

34. For these reasons, Complainant’s challenge to PECO elimination of the residential heat rate must fail for legal insufficiency under 52 Pa.Code §5.101(a)(4).

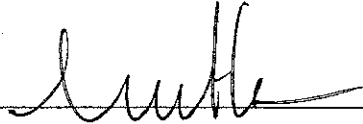
35. PECO has informed its residential heat customers of the phase-out of the rate, and has programs in place to assist customers who are affected by the end of the residential heat rate. PECO has advised customers that they can sign up for budget billing, PECO has encouraged customers to explore energy savings strategies and rebate opportunities, and PECO has directed customers to the Commissions “PA Power Switch”

website and encouraged them to shop for competitive electric generation providers.
PECO has also made customers aware of future pricing options that can help them save money, such as the Smart Time Pricing which is scheduled to become available in 2012.

REQUEST FOR RELIEF

WHEREFORE, for all of the reasons stated herein, PECO respectfully requests that your Honorable Commission dismiss the instant complaint with prejudice.

Respectfully submitted,



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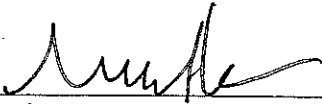
Counsel for PECO Energy Company

Dated: August 15, 2011

Commonwealth of Pennsylvania :
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County of Dauphin :

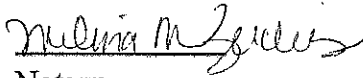
AFFIDAVIT

I, Michael A. Gruin, being duly sworn according to law, depose and say I am 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.



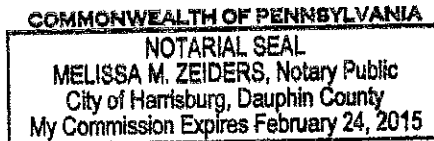
Michael A. Gruin, agent of PECO Energy Company

Sworn and subscribed before me this
15th day of August, 2011



Notary

My Commission Expires:



**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

JACK KUPCHINSKAS
Complainant

v.

PECO ENERGY COMPANY
Respondent

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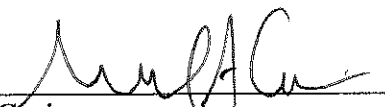
Docket No. C-2011-2253896

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 party listed below, in accordance with the requirements of 52 Pa. Code §1.54 (relating to service by a party).

VIA Federal Express

Jack Kupchinkas
4152 Tersher Dr.
Doylestown, PA 18902



Michael Gruin

DATED: November 14, 2011