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November 17, 2011

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

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NOV 17 2011

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

RE: Carla Nixon v. PECO Energy Company
PUC Docket No. C-2011-2240763

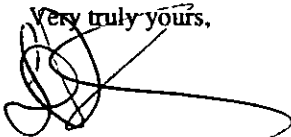
Dear Ms. Chiavetta:

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

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

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

Very truly yours,



Tishekia Williams
Counsel for PECO Energy Company
Enc.

Cc: Carla Nixon

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**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION** NOV 17 2011

CARLA NIXON
Complainant

v.

PECO ENERGY COMPANY
Respondent

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

Docket No. C-2010-2195490

**EXCEPTIONS OF PECO ENERGY COMPANY
TO THE INITIAL DECISION OF
ADMINISTRATIVE LAW JUDGE KY VAN NGUYEN**

Pursuant to 52 Pa.Code §5.535, PECO Energy Company (PECO) hereby files exceptions to the Initial Decision (hereafter "ID") issued in this docket. PECO Energy excepts to the ID on two grounds. First, the decision is not supported by substantial evidence. Second, the Administrative Law Judge is mistaken regarding the law for reasons discussed more fully below.

I. PROCEDURAL HISTORY

On or about May 4, 2011, Carla Nixon filed a formal complaint against PECO Energy disputing bills rendered in her name for service provided to 6371 Germantown Avenue, Philadelphia PA 19144. The formal complaint is an appeal of the informal complaint filed with the Bureau of Consumer Services (BCS) at case number 002797123, which was dismissed on April 15, 2011. On May 27, 2011, PECO filed an Answer to the formal complaint. By notice dated July 19, 2011, a hearing was scheduled for August 31, 2011. The hearing convened as scheduled. By Initial Decision dated October 28, 2011, the Administrative Law Judge dismissed the complaint in part, and sustained the complaint in part.

II. STATEMENT OF THE CASE

The issue presented is whether the Administrative Law Judge erred by determining that the Ms. Nixon is only responsible \$4,670.73 because she did not reside at 6371 Germantown Avenue, Philadelphia PA 19144. PECO Energy's position is quite simple. That is, a customer may be liable for payment by benefitting from the service provided, or upon PECO's acceptance of the customer's application for service. A customer can not be relieved of her obligation to pay for services rendered without providing substantial evidence that she did not benefit from the service, or request the service.

As a preliminary matter, the Complainant admits receiving service at six separate (6) addresses between December 2006 and July 2010 leaving behind arrears totaling \$4,670.73. T. at p. 15-20. The unpaid balances from these addresses are not in dispute and therefore not substantively addressed in these exceptions.

The Complainant does dispute being billed for service at 6371 Germantown Avenue, 1st Fl, Philadelphia PA 19144. The Complainant was billed for service at 6371 Germantown Avenue from April 10, 2007 until December 22, 2010. PECO Exhibit 3. Although this was billed at a residential rate, Ms. Nixon testified that this address was the site of a daycare operated by her mother called "Grandmom's Place." PECO Exhibit 1, T. at p. 20. Ms. Nixon's children attended daycare at "Grandmom's Place" since the facility was opened in 2007. T. at p. 20-21. Ms. Nixon knew that service at "Grandmom's Place" was active in her name since late 2007 or early 2008. T. at p. 22, line 7-10. Ms. Nixon does not allege that she contacted PECO to request that the service be taken out of her name in 2007, 2008, 2009, or 2010, although she was admittedly

aware that the service was billed to her. Instead, Ms. Nixon states that she went back and forth with her mother trying to get her to resume the bill. T. at p. 24. Then, when Ms. Nixon attempted to get new service “this year” (2011) and was asked to pay her outstanding debts, she disputed responsibility for the bill resulting from service provided to “Grandmom’s Place.” T. at p. 5-6.

PECO’s witness testified that PECO received a request for service at Grandmom’s Place from Ms. Nixon. T. at p. 37. PECO’s witness also testified that a customer does not have to reside at a property to be responsible for the billing. When a customer applies for service, they are making a contract with the company stating that [they] are responsible for the bill. T. at p. 36.

Ms. Nixon offered no verifiable, substantiating evidence to support her allegation that she did not benefit from the service at “Grandmom’s Place,” that she did not make the application for service at “Grandmom’s Place,” or authorize another person to make the application for service in her name.” Instead, Ms. Nixon stated that her evidence was destroyed the day before the scheduled hearing. T. at p. 6.

Based on this record, the Administrative Law Judge determined that Ms. Nixon is not responsible for the charges for service provided to “Grandmom’s Place” although she admittedly knew the service was billed to her. The Administrative Law Judge reasons that because Ms. Nixon received concurrent service at her residence and “Grandmom’s Place,” it is more likely than not, that she did not reside at “Grandmom’s Place.” And, if she did not reside and benefit from the service at “Grandmom’s Place,” she may be “morally obligated” to pay for the service charges billed in her name but can not be compelled to pay by law. PECO respectfully suggests that the decision is not supported

by substantial evidence, and pursuant to PECO's Commission approved tariff rule 4.5, customer are contractually obligated to pay for service when their application is accepted, regardless of whether they reside at the address.

III. RELEVANT LAW.

66 Pa.C.S. § 1403. Definitions

"Customer." *A natural person in whose name a residential service account is listed and who is primarily responsible for payment of bills rendered for the service* or any adult occupant whose name appears on the mortgage, deed or lease of the property for which the residential utility service is requested. [*Emphasis Added*]

66 Pa.C.S. § 1407. Reconnection of service

(d) **Payment of outstanding balance at premises.**--A public utility may also require the payment of any outstanding balance or portion of an outstanding balance if the applicant resided at the property for which service is requested during the time the outstanding balance accrued and for the time the applicant resided there.

PECO Tariff Rule 4.5 Acceptance

Before the Company affirmatively accepts an application, the Company will consider the application to be pending. When an application is accepted, it constitutes the contract between the customer and the Company, subject to the Rules and Regulations. A customer or other recipient of service also becomes contractually obligated to the Company when service is provided according to the application either with or without modification, or when the customer otherwise receives service.

IV. ARGUMENT

- a. The Initial Decision absolving Ms. Nixon of liability for charges incurred at 6371 Germantown Avenue is not supported by substantial evidence.

As the person seeking affirmative relief from the Commission the Complainant has the burden of proof. 66 Pa. C.S. §332(a). While the burden of persuasion may shift back and forth during a proceeding, the burden of proof never shifts. The burden of proof always remains on the party seeking affirmative relief from the Commission. *Milkie v. Pa. PUC*, 768 A.2d 1217 (Pa. Cmwlth. 2001). To satisfy its burden of proof, a Complainant must demonstrate by a preponderance of the evidence that PECO has violated its tariff, the Public Utility Code or Commission regulations. *Se-Ling Hosiery, Inc. v. Margulies*, 364 Pa. 45, 70 A.2d 854 (1950); *Feinstein v. Philadelphia Suburban Water Company*, 50 PA PUC 300 (1976).

It is well established that mere bald assertions, personal opinions or perceptions do not constitute evidence. *Pennsylvania Bureau of Corrections v. City of Pittsburgh*, 516 Pa. 75, 532 A.2d 12 (1987). The Commission's decision must be supported by "substantial evidence," which consists of evidence that a reasonable mind might accept as adequate to support a conclusion. A mere "trace of evidence or a suspicion of the existence of a fact" is insufficient. *Norfolk and Western Railway Co. v. Pa. PUC*, 489 Pa. 109, 413 A.2d 1037 (1980).

Ms. Nixon did not meet her burden of proof in this case. Ms. Nixon merely appeared at the scheduled hearing and offered her testimony that she did not reside at "Grandmom's Place" and that her mother placed the service in her name. Based on this testimony alone, Ms. Nixon was relieved of thousand's of dollars worth of unpaid utility

charges. The unsupported testimony is tantamount to “mere bald assertions” and falls remarkably short of the burden of proof.

It is true that Ms. Nixon was billed for concurrent service. However, customers are permitted to have multiple service accounts simultaneously. The fact that Ms. Nixon was billed for service at the daycare facility her mother ran and children attended, while also being billed for service at her residence is not substantial evidence that she was billed incorrectly. Ms. Nixon offered no evidence that she did not benefit from the service, request the service, or took reasonable actions with PECO to remove the service from her name although she knew she was being billed. She merely denies responsibility. A customer should not be relieved of a bill by merely disputing responsibility.

- b. The Administrative Law Judge’s conclusion that “by accepting the responsibility to pay without residing at a service address, a customer assumes a moral obligation to pay..., but is not recognized by law” is incorrect.

A public utility is entitled to full payment for service provided to customers and all customers are obligated to pay for the utility service provided to them. *Scaccia v. West Penn Power Co.*, 55 Pa. P.U.C. 637 (1982); *Mill v. Pa. Public Utility Comm’n*, 447 A.2d 1100 (1982); *Bolt v. Duquesne Light Company*, Docket No. Z-8712758 (Order entered April 8, 1988). A “customer” is defined as “**a natural person in whose name a residential service account is listed and who is primarily responsible for payment of bills rendered for the service** or any adult occupant whose name appears on the mortgage, deed or lease of the property for which residential service is requested.” 66 Pa.C.S. §1403.

Moreover, upon PECO's acceptance of a customer's application for service, the customer becomes contractually obligated to pay for those services. Rule 4.5 of PECO Energy's Commission approved tariff provides that

"...When an application is accepted, it constitutes the contract between the customer and the Company, subject to the Rules and Regulations. A customer or other recipient of service also becomes contractually obliged to the Company when service is provided according to the application either with or without modification, or when the customer otherwise receives service."

PECO's Commission approved tariff is prima facie reasonable and has the full force and effect of law. 66 Pa.C.S. § 316; *Kossmann v. PA PUC*, 694 A.2d 1147 (Pa Cmwl 1997); *Brockway Glass Co. v. PA. PUC*, 437 A.2d 1067 (Pa. Cmwl 1981). It is also true that a public utility may also require the payment of any outstanding balance or portion of an outstanding balance if the applicant resided at the property for which service is requested during the time the outstanding balance accrued for the time period the applicant resided there. 66 Pa.C.S. §1407(d)."


It is well established that customers are obligated to pay for services rendered. The definition of "customer" may include persons that do not reside at the property. Instead, a customer may be defined as "a natural person in whose name a residential service account is listed and who is primarily responsible for payment of bills rendered for the service." This definition does not require a person to be an occupant of the property for liability to attach. Moreover, PECO's tariff provides that liability attached at the time the application is accepted. By requesting service in her name, and knowingly

allowing it to remain in her name for more than three (3) years, Ms. Nixon became a PECO customer at "Grandmom's Place" and liable for the unpaid balance.

V. CONCLUSION

The Commission should reverse the initial decision reducing Ms. Nixon's liability from \$8,037.35 to \$4,670.73 because the decision is not supported by substantial evidence and the ALJ erred regarding the governing law.

Respectfully submitted,



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Docket No. C-2010-2195490

VERIFICATION

I, Tishekia Williams, hereby declare that I am counsel for PECO Energy Company; that as such I am authorized to make this verification on its behalf; that the facts set forth in the foregoing Pleading are true to the best of my knowledge, information and belief, and that I make this verification subject to the penalties of 18 Pa. C.S. § 4904 pertaining to false statements to authorities.



Date: November 17, 2011

Tishekia Williams

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SECRETARY'S BUREAU
Docket No. C-2010-2195490**

CERTIFICATE OF SERVICE

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

Office of Special Assistants
3rd Floor, Keystone Building
400 North Street
Harrisburg, PA 17105

Carla Nixon
3420 Garrett Road
Apt B-14
Drexel Hill, PA 19026



Tishekia Williams

DATED: November 17, 2011

From: (215) 841-5353
Anita Zaketa

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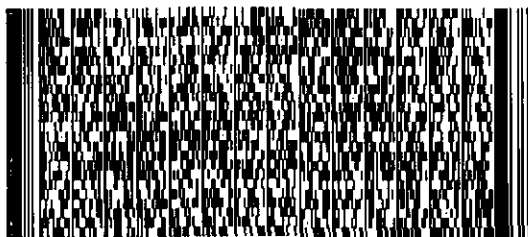
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Public Utilities Commission
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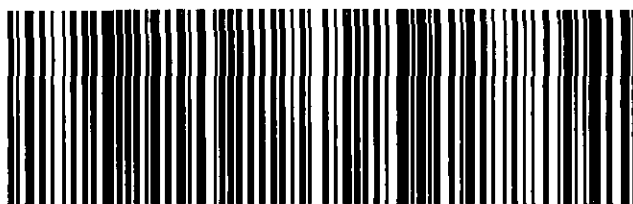
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