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January 13, 2012

**Via e-Filing and FedEx Overnight Delivery**

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

**RE: Melissa Randall v. PECO Energy Company**  
**Docket No. C-2011-2219901**

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.

Best Regards,

STEVENS & LEE



Dana Pirone Carosella

Encl.

cc: Melissa Randall w/encl. (via FedEx Overnight Delivery)  
The Office of Special Assistants w/encl. (hardcopy and CD, via FedEx Overnight Delivery)

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A PROFESSIONAL CORPORATION

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

MELISSA RANDALL	:	
Complainant	:	
v.	:	Docket No. C-2011-2219901
	:	
PECO ENERGY COMPANY	:	
Respondent	:	

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**REPLY EXCEPTIONS  
OF PECO ENERGY COMPANY**

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Pursuant to 52 Pa.Code §5.535, PECO Energy Company (“PECO”) hereby replies to the Exceptions of Complainant Melissa Randall (“Complainant”) as follows:

**I. PROCEDURAL HISTORY**

On or about January 10, 2011, Complainant filed a Formal Complaint (“Complaint”) against PECO Energy Company (“PECO”). The Complaint alleges that Complainant had previously participated in a telephonic hearing, appealed the decision from the prior hearing, and failed to receive anything after the appeal. She also alleges that the “first” judge set a payment arrangement for her to pay \$253.00 per month, that PECO placed her on a different payment arrangement, that she complied with the second payment arrangement (with PECO), and that she received a judgment from a second judge ordering her to pay in excess of \$2000.00 per month or more, plus her current bill. Complainant further alleges that the terms of the last payment agreement are impossible for her to keep and requests that the Pennsylvania Public Utility Commission (“PUC” or “Commission”) issue a new payment arrangement.

On January 31, 2011, PECO filed an Answer and New Matter with a Notice to Plead (the "Answer") in response to the Complaint. In its Answer, PECO admits that Complainant did have a telephonic hearing on February 23, 2009, before Administrative Law Judge ("ALJ") Cynthia Williams in connection with Complainant's request for a more affordable payment plan in order to pay a balance of \$10,770.61 (as of the telephonic hearing) which appears at Docket No. F-2008-2065525 (the "2008 Action").

PECO's Answer includes a copy of ALJ Fordham's Initial Decision in the 2008 Action. That Initial Decision of June 16, 2009 properly dismissed the Complainant's complaint after a thorough consideration of the Complainant's household gross monthly income of \$7,962.85. (Finding of Fact No. 30). *See Exhibit 1* to PECO's Answer.

On July 16, 2009, Complainant filed Exceptions to the Initial Decision in the 2008 Action alleging "evidence" of a change in income from her adult children who contribute to the household's gross income.

By Opinion and Order dated March 11, 2011, the Commission properly dismissed the Formal Complaint and denied the Exceptions which, as in the present case, inappropriately attempted to introduce new facts after the evidentiary record had closed contrary to 52. Pa. Code § 5.431(b). Based upon the evidence presented, the Commission ordered a six (6) month payment agreement for Complainant to pay a balance of \$10,770.00. The Commission found that Complainant was only entitled to a six (6) month payment agreement because her gross monthly income exceeded 300% of the Federal Poverty Level. *See* 66 Pa. C. S. § 1405 (d). Thus, Complainant's monthly payment would be approximately \$1,795.00, in addition to her current charges.

In reaching its conclusion in the 2008 Action, the Commission found:

1. Complainant had been given four (4) previous payment arrangements all of which she failed to comply with, the first of which occurred in February 2004;
2. That Section 1405(d) of the Public Utility Code went into effect after the Complainant's first payment arrangement and thus, a pre-Chapter 14 payment arrangement does not prohibit the Commission from establishing a payment arrangement pursuant to Chapter 14 before the prohibition under Section 1405(d) was applicable, 66 Pa.C.S. § 1405 (d);
3. The Commission's Bureau of Consumer Services ("BCS") did have authority to issue a payment arrangement under the circumstances... because the 2008 complaint was the first post-chapter 14 payment arrangement requested by the Complainant;
4. The 2008 Complaint was a timely appeal of the BCS decision; and
5. Based upon the Complainant's household income, the 2008 BCS decision was inconsistent with Chapter 14 and should be amended.

*Randall v. PECO Energy Company*, Docket No. F-2008-2065525, Opinion and Order, entered April 5, 2010 at 8-9.

In its Answer under New Matter, PECO avers that Complainant is requesting yet another payment agreement without having pled that there has been a change in income. Moreover, PECO contends that the Complainant is barred by the doctrine of res judicata (or claim preclusion) because the Complainant was afforded a full and fair opportunity to present her case in the 2008 Action. PECO further asserts that the Commission issued a final decision in the 2008 Action and Complainant cannot receive another payment agreement until she pays off the balance on the existing Commission ordered payment agreement.

On February 22, 2011, Complainant filed a letter with the Commission, presumably in response to PECO's New Matter portion of its Answer. In this letter,

Complainant stated that she was not present at the public meeting when the Commission considered her Exceptions in the 2008 Action, she requests a telephonic hearing, and alleges her household income and expenses have changed as reflected in a document she included with her letter.

As a result of Complainant's February 22, 2011 letter, a Hearing Notice dated May 18, 2011 was issued for an Initial In-Person hearing on Monday, July 25, 2011. The Hearing Notice assigned ALJ Angela T. Jones as the presiding officer.

By Prehearing Order dated May 24, 2011, ALJ Jones noted that it was not clear whether Complainant's letter of February 22, 2011 had been served on PECO. In order to make certain that PECO was aware of Complainant's letter, ALJ Jones attached the letter to the Prehearing Order. The Prehearing Order confirms that Complainant did not plead a change of income in her Complaint, but does in the letter of February 22, 2011. Finally, the Prehearing Order acknowledges that whether Complainant's household income has changed is a fact that must be verified and is the cause for an evidentiary hearing.

By letter dated June 28, 2011 to ALJ Jones, Complainant reiterated her request for a telephonic hearing because of a medical condition, asked that the scheduled July 25, 2011 evidentiary hearing proceed telephonically, and provided her telephone number to be used for the hearing. By memorandum, ALJ Jones filed the Complainant's letter with the Commission on June 28, 2011.

By letter dated July 6, 2011, ALJ Jones granted Complainant's request for a telephonic hearing.

Because of a death in ALJ Jones' family, the July 25, 2011 hearing was rescheduled for September 19, 2011 and, in error, it was scheduled as an In-Person Hearing. This scheduling error was corrected by way of Prehearing Order #2 dated September 15, 2011.

The evidentiary hearing in this matter convened telephonically on September 19, 2011. Consistent with the May 24, 2011 Prehearing Order, ALJ Jones determined on September 19, 2011 that the factual matter of whether there was a legally significant change in Complainant's household income was pivotal as to whether any further evidence would be needed. As such, the hearing was limited to determining whether Complainant had a change in household income. ALJ Jones explained at the hearing that once this issue was determined, she would then advise whether the matter would proceed forward with either a decision or further hearing.

Complainant provided one exhibit marked, Randall Exhibit 1, which is a table of the household net monthly income and the household monthly expenses. Based on the evidence presented at the hearing, in Order # 3, dated September 20, 2011, Judge Jones directed the Complainant to provide evidence of her current household income by September 30, 2011 as an update to Randall Exhibit 1. Complainant complied. The updated information reflecting Complainant's household income was identified as Randall Exhibit 2. ALJ Jones admitted both exhibits into evidence.

On November 21, 2011, ALJ Jones issued an Initial Decision in this matter. The Initial Decision found, among other things, that Complainant failed to sustain her burden of proof and did not demonstrate a legally significant change in household income to

qualify for a Commission issued payment agreement. As such, the complaint was dismissed.

On December 21, 2011, Complainant filed timely Exceptions to the Initial Decision wherein she asserts facts that are not in the evidentiary record.

PECO's Reply Exceptions are limited to the issue addressed in the Initial Decision.

## **II. ARGUMENT**

### **A. The Commission Should Adopt the Findings and Conclusions in the Initial Decision Dismissing the Complaint.**

The Commission should affirm the Initial Decision and sustain the dismissal of the Complaint as there is no valid basis for reversing the Initial Decision.

The burden of proof is on the party seeking a rule or order from the Commission. Public Utility Code 66 Pa. C. S. § 332(a). Complainant is the proponent of a rule or order in the instant matter. Because of this, Complainant has the burden of proving by a preponderance of the evidence that PECO has violated the Public Utility Code, a regulation, or order of the Commission. *Se-Ling Hosiery v. Margulies*, 364 Pa. 45, 70 A.2d 854 (1950). Complainant must show that the utility is responsible for the problem described in the complaint. *Feinstein v. Philadelphia Suburban Water Company*, 50 Pa. P.U.C. 300 (1976). If the Complainant establishes a prima facie case, the burden of going forward shifts to the utility, however, the ultimate burden of persuasion remains with the Complainant. *Milkie v. Pennsylvania Public Utility Commission*, 768 A.2d 1217 (Pa. Cmwlth. 2001). In reviewing the Complaint, the Commission's role is to determine whether the burden of proof has been sustained. *Burleson v. Pennsylvania Public Utility*

*Commission*, 4443 A.2d 1373 (Pa. Cmwlth. 1982), *aff'd*, 501 Pa. 443, 461 A.2d 1234 (1983).

In this case, Complainant has the burden of proof to demonstrate to this Commission that she qualifies for a Commission ordered payment agreement, other than the one afforded her in the 2008 Action, because of a change in household income. In support of her Complaint, Complainant offered evidence consisting of her testimony on September 19, 2011 and two (2) exhibits. At the hearing, Complainant testified that her 2008 net income was approximately \$6,000.00 for four people. (Finding of Fact 3). She further testified that in January 2011, her household consisted of three adults, Complainant, her husband, and an adult child. (Finding of Fact 6).

With respect to household income in 2011, Complainant testified that her family's net income in January 2011, when she filed the Complaint, was \$5,046.00. This is consistent with the data contained in Randall Exhibit 1, which is a table identifying Complainant's household net monthly income and expenses.<sup>1</sup> However, when PECO's attorney asked Complainant about her household's gross monthly income for 2011, Complainant testified that she could not say because she did not have the information with her. (N.T. 38). In order to allow Complainant more time to provide this information, the record was left open for seven days and ALJ Jones issued Order #3. (N.T.39).

After the hearing, Complainant provided her family's gross household income for 2011. This information is contained in Randall Exhibit 2. Randall Exhibit 2 reflects that Complainant's household income is approximately \$7,425 per month.

In the Initial Decision, ALJ Jones explained in detail, that Complainant must show that she is entitled to a new payment agreement based on a change in income. 66

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<sup>1</sup> At the hearing, Complainant corrected two expenses appearing on Randall Exhibit 1.

Pa.C.S. § 1405 (b) and (d). ALJ Jones further explained that “change in income” means “a decrease in household income of 20% or more if the customer’s household income level exceeds 200% of the Federal poverty level or a decrease in household income of 10% or more in the customer’s household income level is 200% or less of the Federal poverty level.” (Initial Decision p. 8) ALJ Jones then went on to compare the two (2) years at issue, 2008 and 2011, regarding household income and family members. In so doing, the Initial Decision makes clear that the 2008 Commission ordered payment agreement is based on Complainant’s income of nearly \$8,000.00 per month for a family of four (4), which exceeds 300% of the Federal poverty level.

Next, the Initial Decision explains that while Complainant’s household income in 2011 decreased to \$7,411.92 and the family size decreased to three household members, 300% of the Federal poverty level is \$4,632.50. Because Complainant’s income exceeds 300% of the Federal poverty level, she would still need to demonstrate a change in income of at least 20%.

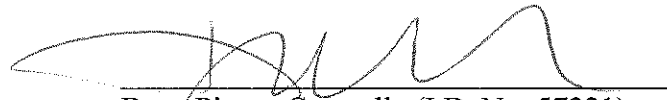
Here, the record demonstrates that Complainant’s income did not decrease by 20% or more in 2011 to qualify for a Commission ordered payment agreement. The percentage change in Complainant’s income is only 6.92% ( $\frac{\$7,962.85 - \$7,411.92}{\$7,962.85}$ ) (\$7,962.85 (income in 2008) minus \$7,411.92 (income in 2011) divided by \$7,962.85 (income in 2008)). (Initial Decision p. 9). This is significantly less than the 20% change in income Complainant must show in order to qualify for a Commission payment agreement. *See* 66 Pa.C.S. §§ 1405 (b) and (d).

Because Complainant did not meet her burden to demonstrate a change in income in order to qualify for a Commission ordered payment agreement, ALJ Jones properly dismissed the Complaint.

**III. CONCLUSION**

For the reasons stated above, PECO respectfully requests that the Commission deny Complainant's Exceptions and dismiss the Complaint, consistent with the well-reasoned Initial Decision.

Respectfully submitted,



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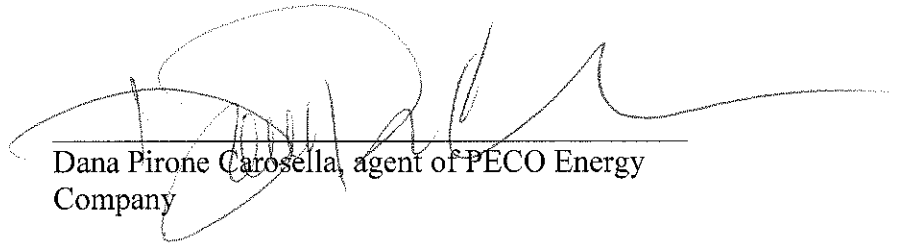
Counsel for PECO Energy Company

Dated: January 13, 2012

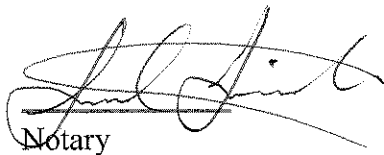
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County of Montgomery :

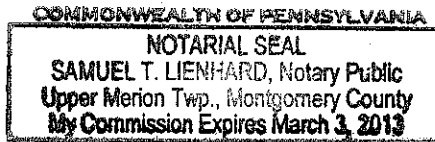
**AFFIDAVIT**

I, Dana Pirone Carosella, 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.

  
\_\_\_\_\_  
Dana Pirone Carosella, agent of PECO Energy  
Company

Sworn and subscribed before me this  
13th day of January, 2012

  
\_\_\_\_\_  
Notary



My Commission Expires: March 3<sup>rd</sup>, 2013

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

MELISSA RANDALL	:	
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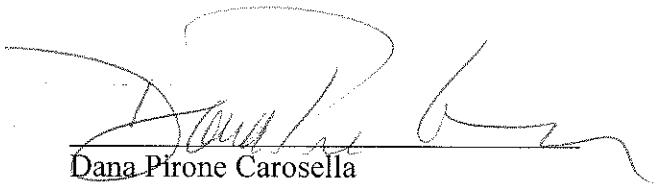
**CERTIFICATE OF SERVICE**

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 FedEx Overnight Delivery

Melissa Randall  
416 East State Street  
Media, PA 19063

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

  
Dana Pirone Carosella

DATED: January 13, 2012