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January 17, 2012

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, Second Floor
Harrisburg, PA 17120**Re: Stanley Elliott v. PECO Energy Company
PUC Docket No. F-2010-2202059**

Dear Ms. Chiavetta:

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

—	Answer (1 original)
—	Answer & New Matter (1 original)
—	Motion to Strike (original)
—	Motion for Judgment on the Pleadings (1 original)
—	Objection (1 original)
<u>X</u>	Exceptions (1 original)
—	Reply Exceptions (1 original)
—	Main Brief (1 original)
—	Reply Brief (1 original)

I have enclosed a Certificate of Service showing that a copy of the above document was served on the interested parties. Thank you for your time and attention on this matter.

Very truly yours,

Tishekia Williams
Counsel for PECO Energy Company

TW/adz

Enc.

Scheduling Recommendation: Call of the Docket Non Call of the Docket

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

STANLEY ELLIOTT	:	
Complainant	:	
	:	
v.	:	Docket No. F-2010-2202059
	:	
PECO ENERGY COMPANY	:	
	:	
Respondent	:	

**EXCEPTIONS OF
OF PECO ENERGY COMPANY**

Pursuant to 52 Pa Code § 5.533, PECO Energy Company (PECO) hereby files its Exceptions to the December 22, 2011 Initial Decision (“I.D.”) of the Administrative Law Judge (“ALJ”) in the above-referenced matter. In the ID, the ALJ made twenty eight (28) findings of fact and five (5) conclusions of law. The I.D. should be rejected by the Commission because it is inconsistent with the law governing the relevant issue, and is based in part on conclusions not supported by substantial record evidence.

BACKGROUND AND PROCEDURAL HISTORY

Stanley Elliot initiated this proceeding on behalf of himself by filing a Formal Complaint (“Complaint”) against PECO on or about September 30, 2010 (Mr. Elliot will be referred to herein as “Complainant”). The Complaint contains the following narrative statement:

“The outstanding balance is not mine. When I was suppose to move with my uncle I told at I told him I would be responsible for the electric bill. I was told by the landlord that because I was not on the lease I could not do that so when I called the electric company I spoke to a worker there when she told me that it would be \$95 to take over the bill. I told her to cancel that when the month was out I received a bill but it was a zero balance. Now it has surface that I have an outstanding bill. A bill that I can not afford to pay. I need some kind of satisfaction. Thank you very much.”

As relief the Complainant requested “I would like you to find out who has this bill turn on in my name and make them responsible.”

PECO filed an Answer to the Complaint on October 21, 2010. In its Answer, PECO’s Answer denied that there were incorrect charges on the Complainant’s account. PECO stated that service at 6028 Kingsessing Avenue, 2nd Fl, Philadelphia PA (hereafter “disputed property”) was in the name of Jasper Bryant. Following termination for nonpayment, the Complainant contacted PECO Energy to request service in his name. PECO further responded that the Complainant admitted that he benefitted from the service at the disputed property, and accepted responsibility for the existing balance, and was added to the existing account as the primary ratepayer. Service at the dispute property was again terminated for nonpayment on April 21, 2009. The account was finalized on May 22, 2009.

The evidentiary hearing was held in this matter on October 17, 2011. The Complainant testified on his own behalf, and offered no exhibits into the record. The Complainant’s testimony lacked creditability.¹ For example, during the hearing the Complainant testified that he came back from Atlanta in 2007.² He further testified that “he came back from Atlanta and had to move in with [his] uncle,” Jasper Bryant.³ The Complainant later testified that when he came back from Atlanta, he lived with a cousin for approximately three months then moved in with his uncle.⁴ Following this testimony, the ALJ indicated that the timeline provided

¹ See the ID at page 8 wherein the ALJ states “This, in addition to his conflicting information regarding whether he lived at the subject address prior to October 14, 2010 telephone call to PECO, or for any length of time afterwards, contributed to his lack of credibility as a witness.”

² Tr. at 42.

³ Tr. at 7

⁴ Tr. 42

indicates that the Complainant resided at his uncle's residence in 2008, and the Complainant changed his testimony stating that he moved into his uncle's residence in 2010.⁵ During the hearing, the Complainant also testified that he did not reside with his uncle prior to calling PECO to request service, or after calling PECO to request service.⁶ In addition to the conflicting testimony regarding when the Complainant resided at the dispute property, the Complainant adamantly denied ever agreeing to take responsibility for the existing balance.⁷

At the evidentiary hearing, PECO presented the testimony of one witnesses, and introduced three exhibits into the record. PECO Exhibit 2 is an audio recording of the call placed by the Complainant to PECO Energy requesting a new service account.⁸ In this call, the Complainant was clearly informed that "PECO is not going to start a whole new account from zero if you live at the property."⁹ The Complainant admitted the he lived at the residence, received his mail at the address,¹⁰ and stated "Well, I'm saying, right, yes, I'll accept full responsibility."¹¹

⁵ Tr. at 43

⁶ Tr. at 44, 12-13

⁷ Tr. at 9

⁸ Tr. at 21-31

⁹ Tr. at 25-26

¹⁰ Tr. at 25

¹¹ Tr. at 27. The Complainant's agreement is not outcome determinative of liability for the unpaid balance, but instead demonstrates that the Complainant has not be consistent in the information presented to PECO or the Commission, and understood fully the he was responsible for the past due balance if he benefitted from the service.

EXCEPTION NO. 1

The I.D. improperly concludes that the Complainant sustained his burden of proof without any evidence that he did not benefit from service provided at the disputed property.

The question presented in the instant case is whether PECO Energy improperly billed the Complainant for service provided to the disputed address. To answer this question, the Commission must determine whether the Complainant provided sufficient evidence to conclude that he did not benefit from the service provided during the time the past due balance was accumulated. PECO Energy respectfully submits that he did not.

The party filing the Complaint bears the burden of proving that he or she is entitled to relief from the Commission. 66 Pa.C.S. § 332(a). Meeting the “burden of proof” requires that the evidence be more convincing by even the smallest degree, than the evidence presented by the other side. *Se-Ling Hosiery, Inc. v. Margulies*, 364 Pa. 45, 70 A.2d 854 (1950). To satisfy the burden of proof against a utility, the Complainant must show that the utility is responsible or accountable for the problem described in the Complaint, *Feinstein v. Philadelphia Suburban Water Company*, 50 Pa. P.U.C. 300 (1976); *Patterson v. Bell Telephone Company of Pennsylvania*, 72 Pa. PUC 196 (1990); *Feinstein*, 50 Pa. PUC 300 (1976), or that the utility has violated either its duty under the Public Utility Code or the orders or regulations of the Commission. 66 Pa. C.S. § 701. Any finding of fact necessary to support the Commission’s adjudication must be based upon substantial evidence. *Mill v. Commw., Pa. Pub. Util. Comm’n*, 67 Pa. Commw. 597, 447 A.2d 1100 (1982); *Edan Transportation Corp. v. Pa. Pub. Util. Comm’n*, 154 Pa. Commw. 21, 623 A.2d 6 (1993); 2 Pa.C.S. § 704. More is required than a mere trace of evidence or a suspicion of the existence of a fact sought to be established. *Norfolk and Western Ry. v. Pa. Pub. Util. Comm’n*, 489 Pa. 109, 413 A.2d 1037 (1980).

Here, the Complainant failed to offer any credible evidence to demonstrate that he did not benefit from the service provided at the disputed property. Nonetheless, the ALJ concludes that because the account was not removed from PECO Energy’s Customer Assistance Program

(“CAP”) rate when the Complainant was added as the primary ratepayer, and Mr. Jasper Bryant applied for a LIHEAP grant which is available to any occupant, the Complainant sustained his burden of proof. The ID improperly presumes without sufficient evidence that because a customer must apply for initial enrollment in CAP, the account should have been removed from CAP rate when the Complainant was made the primary ratepayer if PECO Energy believed the Complainant was the “ratepayer.” This is an inaccurate presumption. To the contrary, PECO does not automatically remove an account from its CAP rate when it learns of an additional customer at the property. Instead, once an account is enrolled in CAP, continued enrollment is based on subsequent recertification and income verification. There is no record evidence to determine whether or not the account remained eligible for PECO’s CAP rate. And, therefore there was no basis to conclude that PECO Energy would have or should have automatically removed the account from CAP when it learned of the Complainant’s occupancy based on its current practices.

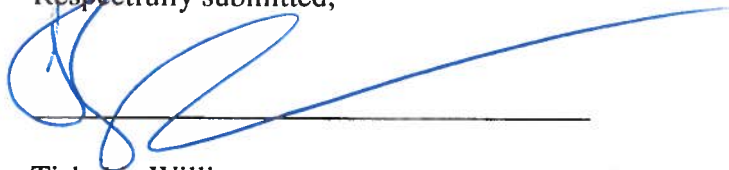
Moreover, PECO Energy respectfully suggests that rate at which the account was billed is tangential to the relevant issue. Namely, whether the Complainant benefitted from the service provided to the disputed property prior to his request for new service. A public utility is entitled to full payment for 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, by *accepting* the services provided to a residence, a customer or applicant becomes legally 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.” 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).

In the instant case, the record is clear that the Complainant applied for service; knew the service remained in his name after applying¹²; and admitted to benefitting from the service provided at the disputed property. The relevant law provides that he is therefore responsible for the balance. As the Complainant failed to submit any evidence that he did not benefit from the service, the ID should be reversed.

Respectfully submitted,

A handwritten signature in blue ink, consisting of several loops and a long horizontal stroke extending to the right.

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Counsel for PECO Energy Company

Dated: January 17, 2012

¹² Tr. at 57.

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

STANLEY ELLIOTT
Complainant

v.

PECO ENERGY COMPANY
Respondent

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Docket No. F-2010-2202059

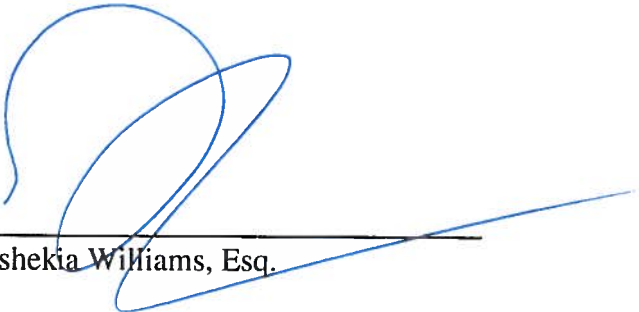
CERTIFICATE OF SERVICE

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

Stanley Elliot
5812 North 2nd Street, Apt 2B
Philadelphia, PA 19120

Pennsylvania Public Utility Commission
Office of Special Assistants
3rd Floor, Keystone Building
400 North Street
Harrisburg, PA



Tishekia Williams, Esq.

DATED: January 17, 2012