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FEB - 9 2012

BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

PA PUBLIC UTILITY COMMISSION  
SECRETARY'S BUREAU

<b>GARY WILLIAM HAYS</b>	:	
<b>Complainant</b>	:	
v.	:	<b>DOCKET NO. F-2012-2284235</b>
	:	
<b>PECO ENERGY COMPANY</b>	:	
<b>Respondent</b>	:	

**PRELIMINARY OBJECTION OF RESPONDENT,  
PECO ENERGY COMPANY**

Respondent, PECO Energy Company (“PECO Energy”), pursuant to 52 Pa. Code § 5.101(a)(4) respectfully petitions this Honorable Commission to dismiss the instant Complaint as legally insufficient.

1. On January 20, 2012, PECO Energy was served with a formal complaint filed by Gary William Hays (hereafter “Complainant”). The Complainant disputes billing for services rendered per his request.

2. PECO Energy simultaneously filed an Answer and the instant Preliminary Objection.

3. Commission procedure regarding the disposition of preliminary objections is similar to that utilized in Pennsylvania civil procedure.<sup>1</sup>

4. In deciding preliminary objections, the Public Utility Commission must determine, based on the factual pleadings of the petitioner, if relief or recovery is possible.<sup>2</sup>

<sup>1</sup> *Equitable Small Transportation Interveners v. Equitable Gas Co.*, 1994 Pa.PUC LEXIS 69, Docket No. C-00935435 (July 18, 1994)

<sup>2</sup> 2006 Pa. PUC Lexis 111, \*7.

5. A complaint must be able to recover under the law to survive a preliminary objection.<sup>3</sup>

6. All of the non-moving party's averments must be taken as true for the sake of deciding the preliminary objection.<sup>4</sup>

7. The court does not, however, need to accept, "unwarranted inferences from facts, argumentative allegations, or expressions of opinions."<sup>5</sup>

8. Section 703 of the Public Utility Code, 66 Pa.C.S.A. § 703(b) provides that the Commission may dismiss any complaint without a hearing if, in its opinion, a hearing is not necessary in the public interest.

9. A hearing is required only when there is a disputed question of fact, and is not required to resolve questions of law. *Dee-Dee Cab, Inc. v. Pa.Pub. Util. Comm'n*, 817 A.2<sup>nd</sup> 593 (Pa.Commw. Ct. 2003), petition for allowance of appeal denied, 836 A.2d 123 (Pa. 2003).

10. Here, assuming all of the Complainant's allegations are true, he is not entitled to relief under the law. Therefore, the complaint is legally insufficient and should be dismissed.

11. The Complainant claims that he was living at the disputed property but could not request discontinuance because he was allegedly incarcerated. The Complainant claims that the service was inappropriately left in his name because a third party failed to ensure that the next "head of household" applied for service. Therefore, Hancock Manor should pay the disputed bill.

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<sup>3</sup>*Milliner v. Enck*, 709 A.2d 417, 418 (Pa. Super. Ct. 1998) ("preliminary objection should be sustained only where it appears with certainty that, upon the facts averred, the law will not allow the plaintiff to recover").

<sup>4</sup>*Id.* at 7-8.

<sup>5</sup>*Feingold v. McNulty*, 2009 Phila. Ct. Com. Pl LEXIS 167, \*3.

12. 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).

13. 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.

14. Moreover, 52. Pa Code. § 56.16. provides:

A customer who is about to vacate premises supplied with public utility service or who wishes to have service discontinued shall give at least 7 days notice to the public utility and a noncustomer occupant, specifying the date on which it is desired that service be discontinued. **In the absence of a notice, the customer shall be responsible for services rendered.** After a reasonable attempt to obtain meter access, if the public utility is not able to access the meter for discontinuance, service shall be discontinued with an estimated meter reading upon which the final bill will be based. The resulting final bill is subject to adjustment once the public utility has obtained an actual meter reading.

15. The Complainant does not dispute that the service was placed in his name. The Complainant disputes being required to pay for the service after he vacated the premises while admitting that he did not request discontinuance.

16. PECO Energy avers that pursuant to the applicable Commission law, the Complainant is responsible for the balance.

**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,

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

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Tishekia Williams  
Counsel for PECO Energy Company  
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Philadelphia, PA 19101-8699  
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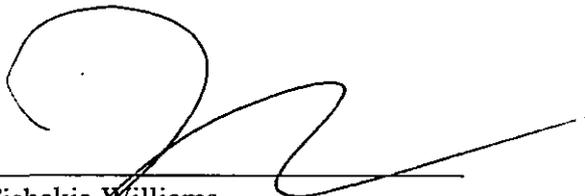
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**VERIFICATION**

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: February 9, 2012

  
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Tishekia Williams

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

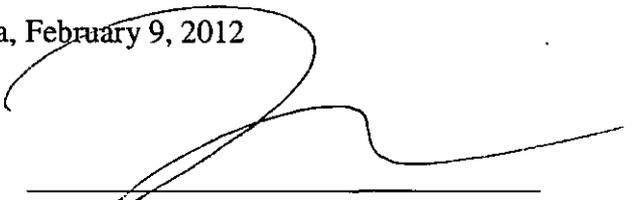
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<b>Respondent</b>	:	

**CERTIFICATE OF SERVICE**

I, Tishekia Williams, hereby certify that I have this day served a copy of PECO Energy Company's Answer in the above matter upon all interested parties by mailing a copy, properly addressed and postage prepaid to:

Gary William Hays  
4529 Howell Street, 1<sup>st</sup> Fl.  
Philadelphia, PA 19135

Dated at Philadelphia, Pennsylvania, February 9, 2012

  
\_\_\_\_\_  
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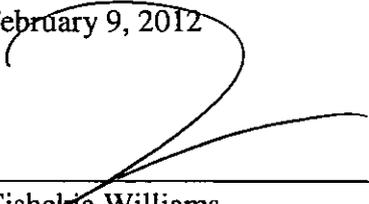
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