

STEVENS & LEE
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February 16, 2012

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

Re: Atley Natalone v. PECO Energy Company
Docket No. C-2011-2279466

Dear Secretary Chiavetta:

Enclosed for filing on behalf of PECO is an original of its Motion for Judgment on the Pleadings in the above-referenced docket. 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.

Very truly yours,

STEVENS & LEE


Dana Pirone Carosella

Encl.

cc: Atley Natalone w/enclosures

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

A PROFESSIONAL CORPORATION

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

ATLEY NATALONE	:	
	:	
Complainant,	:	
	:	Docket No. C-2011-2279466
v.	:	
	:	
PECO ENERGY COMPANY,	:	
	:	
Respondent.	:	

NOTICE TO PLEAD

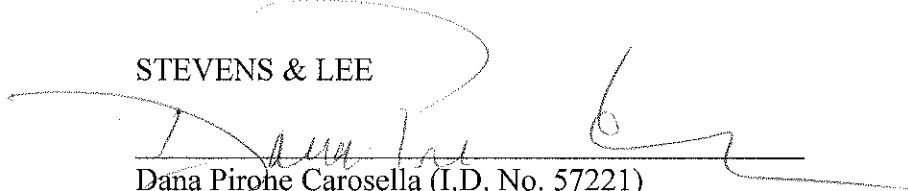
To: *Atley Natalone*

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



Dana Pirohe Carosella (I.D. No. 57221)
620 Freedom Business Center
Suite 200
King of Prussia, PA 19406
Telephone: 610-205-6056
Facsimile: 610-371-7978
dpc@stevenslee.com

Date: February 16, 2012 COUNSEL FOR PECO ENERGY COMPANY

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

ATLEY NATALONE	:	
	:	
Complainant,	:	
	:	Docket No. C-2011-2279466
v.	:	
	:	
PECO ENERGY COMPANY,	:	
	:	
Respondent.	:	

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 December 5, 2011, Complainant filed a Formal Complaint against Respondent, PECO, concerning an alleged rate increase because of the phasing out of PECO’s Residential Off-Peak Service Rate (“Rate OP”). A copy of Complainant’s Formal Complaint is attached as Exhibit 1.
2. PECO was served with the Formal Complaint on December 22, 2011.
3. On January 11, 2012, PECO filed an Answer, New Matter, and Notice to Plead (“Answer”). A copy of PECO’s Answer is attached as Exhibit 2.
4. In its New Matter, PECO explained that there is no proposed rate increase pending before the Pennsylvania Public Utility Commission (“PUC”), the phasing out of PECO’s off- peak electric rate was approved by the PUC as part of PECO’s Default Service Program and Rate Mitigation Plan, and the Complaint must be dismissed for legal insufficiency.
5. On January 24, 2012, Complainant filed his Response to PECO’s New Matter. A copy of Complainant’s Response to New Matter is attached as Exhibit 3.

6. In Complainant's Response to New Matter, for the most part, he either fails to admit or deny the allegations (most of which concern matters of public record) due to insufficient information or denies the allegations.

7. The Commission's regulations at 52 Pa. Code 5.102(a) permit 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).

8. 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).

9. 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).

10. 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 reinstate the off peak electric discount.

11. However, as explained in New Matter, the PUC has already reviewed and approved the phase-out, and there is no legal basis to continue to require PECO to offer the rate.

12. 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.

13. 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

14. On September 10, 2008, PECO filed with the PUC a Petition (“DSP Petition”) requesting that the PUC 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 began on January 1, 2011. PECO’s DSP Plan Petition was assigned Commission Docket No. P-2008-2062739 (the “Action”).

15. The phase out of PECO’s off-peak service rate was included as part of PECO’s DSP Plan.

¹ The PUC 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)).

16. On March 10, 2009, after extensive discovery, hearings, and the filing of testimony and rebuttal testimony in the Action, a Joint Petition for Settlement was filed with the PUC to request approval of PECO's DSP Plan as modified by the Settlement.

17. By Order entered June 2, 2009, the PUC approved the Settlement and PECO's DSP Plan.

18. 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.

19. As of the date Complainant filed his Complaint, he receives generation supply through PECO's default service program.

20. To the extent that Complainant challenges the phase-out of the residential off-peak service rate and any concomitant generation rate increase due to the phase out of this rate, the challenge must be dismissed for legal insufficiency.

21. The PUC only has those duties, powers, responsibilities and jurisdiction that were expressly or by necessary implication given to it by the Pennsylvania Legislature. *Rogoff v. The Buncher Company*, 395 Pa. 477, 151 A.2d 83 (1959).

22. Wholesale market-based generation rates are not governed by the Commonwealth of Pennsylvania. Rather, it is a federal matter and is 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).

23. 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).

24. As the PUC recognized in *Tshudy*, the PUC may not extend the rate caps, which expired in 2010, in order to prevent a generation rate increase.

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

26. 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).

27. 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).

28. 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.

29. 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....”

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

31. The PUC approved PECO's Default Service Plan and the phasing out of the Residential Off-Peak Service Rate (Rate OP) by its Order entered June 2, 2009.

32. The PUC's approval is prima facie evidence of the reasonableness of PECO's rates. 66 Pa.C.S. § 316; *Duquesne Light Company*, 715 A.2d at 545. Therefore, under Section 316 of the Public Utility Code, the PUC's approval of PECO's phase out of the Residential Off-Peak Service Rate is conclusive and binding.

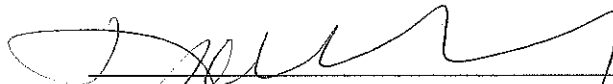
33. For these reasons, Complainant's challenge to PECO's elimination of the Residential Off-Peak Service Rate must fail for legal insufficiency under 52 Pa. Code § 5.101(a)(4).

34. PECO has informed its Residential Off-Peak Service Rate customers of the phase-out of the rate, and has programs in place to assist customers who are affected by the elimination of the residential off-peak service rate. PECO has advised customers that they can sign up for budget billing, has encouraged customers to explore energy savings strategies and rebate opportunities, and has directed customers to the PUC's "PA Power Switch" website to encourage 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 Smart Time Pricing which is scheduled to become available in 2012.

REQUEST FOR RELIEF

WHEREFORE, PECO Energy Company respectfully requests that your Honorable Commission dismiss the instant complaint, with prejudice.

Respectfully submitted,



Dana Pirone Carosella (I.D. No. 57221)
Michael A. Gruin (I.D. No. 78625)
620 Freedom Business Center
Suite 200
King of Prussia, PA 19406
Telephone: 610-205-6056
Facsimile: 610-371-7978
dpc@stevenslee.com
mag@stevenslee.com

Tishekia Williams
PECO Energy Company
2301 Market Street, S23-1
P.O. Box 8699
Philadelphia, PA 19101-8699
Telephone: 215-841-6841
Facsimile: 215-568-3389
Tishekia.williams@exeloncorp.com

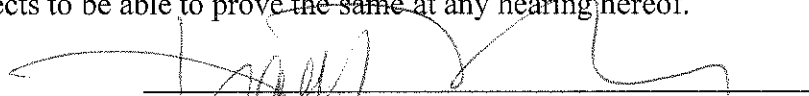
Counsel for PECO Energy Company

Dated: February 16, 2012

COMMONWEALTH OF PENNSYLVANIA :
 : SS.
COUNTY OF MONTGOMERY :

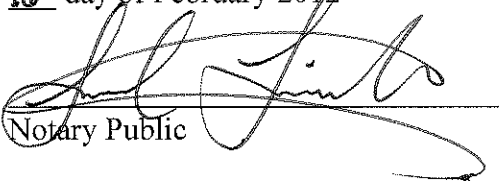
AFFIDAVIT

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 set forth herein 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.

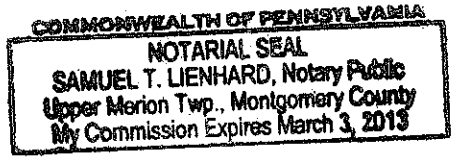


Dana Pirone Carosella, agent of PECO Energy Company

Sworn and subscribed before me this
16th day of February 2012



Notary Public



My Commission Expires: *March 3rd, 2013*

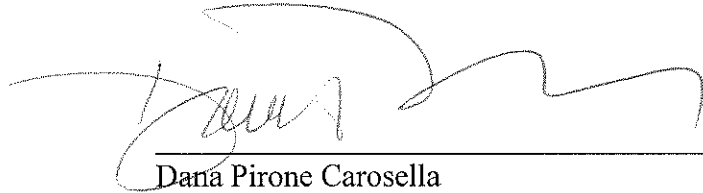
**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

ATLEY NATALONE	:	
	:	
Complainant,	:	
	:	Docket No. C-2011-2279466
v.	:	
	:	
PECO ENERGY COMPANY,	:	
	:	
Respondent.	:	

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 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
Atley Natalone
113 James Dr.
Havertown, PA 19083



Dana Pirone Carosella

DATED: February 16, 2012

Zaketa, Anita D:(BSC)

From: eServe@pa.gov
Sent: Thursday, December 22, 2011 10:02 AM
To: Smith, Ward L.:(BSC)
Cc: Zaketa, Anita D:(BSC)
Subject: PA PUC eServe Notice
Importance: High

Dear WARD L SMITH,

A(n) **Complaint Against Rate Case** has been served in this proceeding. This document is docketed as **C-2011-2279466**. You may view this document at **Formal Complaint**

You are receiving this email because you are a(n) **Respondent** for this case and have agreed to be served electronically. By selecting electronic service (eService), you have agreed that this notification constitutes valid service. Electronic service of any and all documents will be in place of paper service.

Thank You,
Public Utility Commission
Commonwealth of Pennsylvania

** Please do not respond to this automatically generated email.*

12/22/2011

PENNSYLVANIA PUBLIC UTILITY COMMISSION
Formal Complaint Form

RECEIVED
2011 DEC 12 AM 10:54
FA P.U.C.
SECRETARY'S BUREAU

Please print in ink or type.

1. CUSTOMER (COMPLAINANT) INFORMATION

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

Name Atley Natalone

Street/P.O. Box 113 James Dr. Apt # _____

City Havertown State Pa. Zip 19083

County Delaware

Daytime Telephone Number Where We Can Contact You: (610) 449 1383

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

Utility Account Number 24795-01400
(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

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

TELEPHONE
(local, long distance)

4. COMPLAINT (check one)

A. In general, what is your complaint?

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

for Electric
Off-Peak
Service

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 currently receive 70% discount for electric off peak service. Due to deregulation this discount will be eliminated. My bill will increase by about \$80-90/month. Deregulation was designed to decrease electric bills, not increase them. I will not be able to offset this increase by switching to a new supplier. Therefore, my electric bill will increase, not decrease.

Earlier this year I installed a new electric water tank before being notified of the increase. I am now faced with installing a gas water tank in order to keep my costs down. This will cost me an additional \$1100, less than a year ago. I paid \$1300 for a new electric water tank.

There are 160,000 people in the same position as I am. This is an unfair & excessive increase in my electric bill. Also I am a senior citizen on a fixed income.

5. RELIEF

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

I want the Off Peak Electric discount reinstated. I have had this discount since 1969. PECO gave the discount to encourage people to use electric hot water service. The change in discount will force most people to switch to gas service for ^{their} water tank. In my case a new tank was installed 6 months ago. I have basically thrown the money away.

If I must convert to gas hot water I would like PECO to reimburse me the cost.

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 complaint filed)

NO

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

8. LEGAL REPRESENTATION (IF ANY)

None

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: Attley Natalonie, 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).

Attley Natalonie 12/5/11
(Signature) (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:

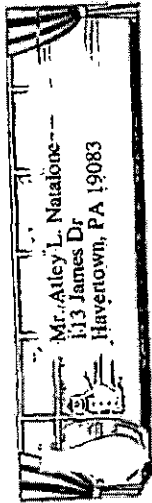
If using overnight delivery service:

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
---------------------------------------------------------------------------------------------------	--------------------------------------------------------------------------------------------------------------------------------------------------------------------

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.

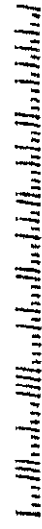


PHILADELPHIA PA 19101

08 DEC 2011 PM 8 T

Secretary
Pennsylvania Public Utility Commission
P.O. BOX 3265
Harrisburg, Pa. 17105-3265

171053265



STEVENS & LEE
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Direct Fax: (610) 371-7978

January 11, 2012

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

Re: Atley Natalone v. PECO Energy Company
Docket No. C-2011-2279466

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


Dana Pirone Carosella

Encl.

cc: Atley Natalone w/enclosures

SCHEDULING RECOMMENDATION: Call of the Docket X Non-Call of the Docket

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

A PROFESSIONAL CORPORATION

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

ATLEY NATALONE
Complainant

v.

PECO ENERGY COMPANY
Respondent

Docket No. C-2011-2279466

NOTICE TO PLEAD

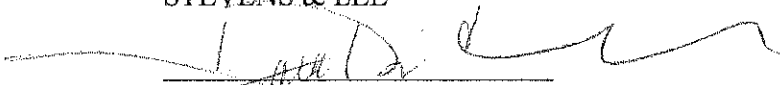
To: Atley Natalone

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



Dana Pirone Carosella
Attorney I.D. No. 57221
620 Freedom Business Center
Suite 200
King of Prussia, PA 19406
Telephone: 610-205-6056
Facsimile: 610-371-7978
dpc@stevenslee.com
Counsel for PECO Energy Company

January 11, 2012

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

ATLEY NATALONE
Complainant

v.

PECO ENERGY COMPANY
Respondent

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:
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:
:

Docket No. C-2011-2279466

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

On December 22, 2011, PECO Energy Company (PECO) was served with a formal complaint from Atley Natalone (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 Pennsylvania Public Utility Commission ("PUC"). The phasing out of PECO's Residential Off-Peak Service Rate ("Rate OP") was approved by the PUC as part of PECO's Default Service Program and Rate Mitigation Plan. As such, the phasing out of the residential off-peak service 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 off-peak

service rate or devise a replacement discounted rate for residential off-peak service. The PUC has already reviewed and approved PECO's phasing out of its residential off-peak service rate. There is no legitimate basis to reverse the PUC's approval allowing PECO to phase out this discount program.

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:

Dana Pirone Carosella (I.D. No. 57221)
Michael A. Gruin (I.D. No. 78625)
620 Freedom Business Center
Suite 200
King of Prussia, PA 19406
Tel. (610) 205-6056
Fax (610) 371-7978

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

11. The Complainant checked the Complaint form box to indicate that she wants to oppose PECO's proposed rate increase and handwrote "for electric off-peak

service.” To the extent that Complainant challenges a “proposed rate increase,” this claim must be dismissed because PECO currently has no proposed rate increase pending before the PUC and as such, there is no proposed rate increase for Complainant to challenge by way of a complaint with the PUC. Therefore, this claim must be dismissed because the subject of the claim does not exist.

12. The Complaint also objects to the elimination of PECO’s Residential Off-Peak Service rate. To the extent that the Complaint challenges PECO’s phasing out of the off-peak service 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 PUC a Petition (“DSP Petition”) requesting that the PUC 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

¹The PUC 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)).

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 began on January 1, 2011. PECO's DSP Plan Petition was assigned Commission Docket No. P-2008-2062739 (the "Action").

16. The phase out of PECO's off-peak service rate was included as part of PECO's DSP Plan.

17. On March 10, 2009, after extensive discovery, hearings, and the filing of testimony and rebuttal testimony in the Action, a Joint Petition for Settlement was filed with the PUC to request approval of PECO's DSP Plan as modified by the Settlement.

18. By Order entered June 2, 2009, the PUC approved the Settlement and PECO's DSP Plan.

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 Complainant filed her Complaint, she receives generation supply through PECO's default service program.

21. To the extent that Complainant challenges the phase-out of the residential off-peak service rate and any generation rate increase due to the phase out of this rate, the challenge must be dismissed for legal insufficiency.

22. The PUC only has those duties, powers, responsibilities and jurisdiction that were expressly or by necessary implication given to it by the Pennsylvania Legislature. *Rogoff v. The Buncher Company*, 395 Pa. 477, 151 A.2d 83 (1959).

23. Wholesale market-based generation rates are not governed by the Commonwealth of Pennsylvania. Rather, it is a federal matter and is regulated only by the Federal Energy Regulatory Agency ("FERC"). See *Utilitimax.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.'" *Utilitimax.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 PUC may grant the Complainant regarding market-based generation rates. As the PUC recognized in *Tshudy*, the PUC 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, it 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 of recent significant changes in circumstances that would allow Complainant to overcome the presumption that PECO’s rates are just and reasonable.

32. The PUC approved PECO’s Default Service Plan and the phasing out of the Residential Off-Peak Service Rate (Rate OP) by its Order entered June 2, 2009.

33. The PUC’s approval is *prima facie* evidence of the reasonableness of PECO’s rates. 66 Pa.C.S. §316; *Duquesne Light Company*, 715 A.2d at 545. Therefore, under Section 316 of the Public Utility Code, the PUC’s approval of PECO’s phase out of the Residential Off-Peak Service Rate is conclusive and binding.


34. For these reasons, Complainant’s challenge to PECO’s elimination of the Residential Off-Peak Service Rate must fail for legal insufficiency under 52 Pa.Code §5.101(a)(4).

35. PECO has informed its Residential Off-Peak Service Rate customers of the phase-out of the rate, and has programs in place to assist customers who are affected by the elimination of the residential off-peak service rate. PECO has advised customers that they can sign up for budget billing, has encouraged customers to explore energy savings strategies and rebate opportunities, and has directed customers to the PUC's "PA Power Switch" website to encourage 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 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 Complaint with prejudice.

Respectfully submitted,



Dana Pirone-Carosella (I.D. No. 57221)
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Fax (610) 371-7978

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(215) 841-6841
Fax: 215.568.3389

Counsel for PECO Energy Company

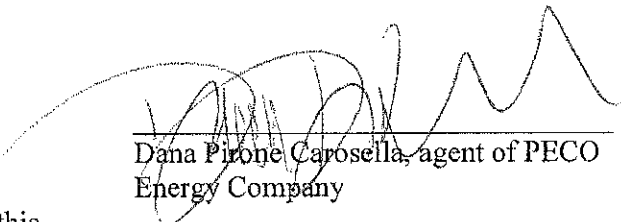
Dated: January 11, 2012

Commonwealth of Pennsylvania :
: County of Montgomery :

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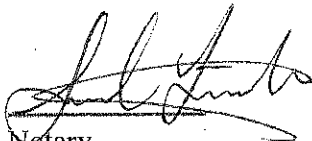
AFFIDAVIT

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
11th day of January, 2012



Notary

My Commission Expires: *March 3rd, 2013*

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

ATLEY NATALONE
Complainant

v.

PECO ENERGY COMPANY
Respondent

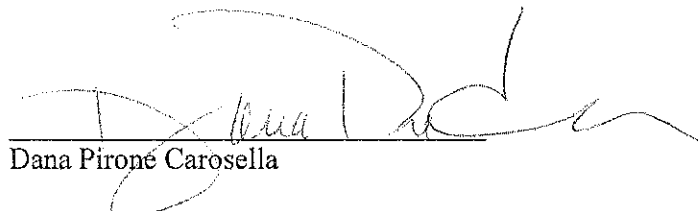
Docket No. C-2011-2279466

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

Atley Natalone
113 James Dr.
Havertown, PA 19083



Dana Pirone Carosella

DATED: January 11, 2012

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

ATLEY NATALONE
Complainant

RECEIVED

v.

JAN 24 2012

Docket no. C-2011-2279466

PECO ENERGY COMPANY
Respondent

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

RESPONSE TO NEW MATTER OF ATLEY NATALONE

Complainant, Atley Natalone, was served with an Answer and New Matter from Respondent PECO Energy Company. Complainant hereby responds as follows:

1. Denies PECO Energy Company's responses to the formal complaint and denies all allegations in paragraph 9 of the New Matter.
2. Admits Paragraph 10 of the New Matter, upon the information provided.
3. With respect to Paragraph 11 of the New Matter, admits Complainant checked a form box and handwrote, but denies that the claim must be dismissed because there is no subject of a claim. Complainant also denies the allegation that PECO has "no proposed rate increased pending" as the 75% discount that is being eliminated translates to a rate increase of 375% on the electric generation charge. Respondent, PECO Energy Company is relying on a checked box; however the claim is also fully set forth in subparagraph B. of the Complaint.
4. Denies the allegations set forth in Paragraph 12 of the New Matter.
5. Complainant is without sufficient information to admit or deny the statements in Paragraph 13 of the New Matter, except that Complainant submits that there effectively has been a rate increase.
6. Complainant is without sufficient information to admit or deny the statements in Paragraph 14 of the New Matter.

7. Complainant is without sufficient information to admit or deny the statements in Paragraph 15 of the New Matter.
8. Complainant is without sufficient information to admit or deny the statements in Paragraph 16 of the New Matter.
9. Complainant is without sufficient information to admit or deny the statements in Paragraph 17 of the New Matter.
10. Complainant is without sufficient information to admit or deny the statements in Paragraph 18 of the New Matter.
11. Denies the allegations set forth in Paragraph 19 of the New Matter.
12. Admits the allegations set forth in Paragraph 20 of the New Matter, but denies the Complainant is female.
13. Denies the allegation that there is no claim in Paragraph 21 of the New Matter, as there has effectively been a rate increase.
14. Complainant is without sufficient information to admit or deny the statements in Paragraph 22 of the New Matter.
15. Complainant is without sufficient information to admit or deny the statements in Paragraph 23 of the New Matter.
16. Complainant is without sufficient information to admit or deny the statements in Paragraph 24 of the New Matter.
17. Denies the allegation that no relief may be granted to the Complainant in Paragraph 25 of the New Matter.
18. Denies the allegations in Paragraph 26 of the New Matter.
19. Complainant is without sufficient information to admit or deny the statements in Paragraph 27 of the New Matter.
20. Complainant is without sufficient information to admit or deny the statements in Paragraph 28 of the New Matter.

21. Complainant is without sufficient information to admit or deny the statements with respect to citations of the cases and Public Utility Code in Paragraph 29 of the New Matter, but Denies that there is no showing of "recent significant change in circumstances" by Complainant.
22. Complainant is without sufficient information to admit or deny the statements in Paragraph 30 of the New Matter.
23. Denies the statements set forth in Paragraph 31 of the New Matter. The statements set forth in the Complainant's Complaint are clear and speak for themselves.
24. Complainant is without sufficient information to admit or deny the statements in Paragraph 32 of the New Matter.
25. Complainant is without sufficient information to admit or deny the statements in Paragraph 33 of the New Matter.
26. Denies the allegations set forth in Paragraph 34 of the New Matter.
27. Denies the allegations set forth in Paragraph 35 of the New Matter.

REQUEST FOR RELIEF

WHEREFORE, Complainant respectfully submits that his Complaint states a cause of action against PECO Energy Company, and that there are alternative requests for relief therein. In addition, PECO Energy Company did not address the alternative requests for relief, and as a result, its request to dismiss the Complaint must be denied.

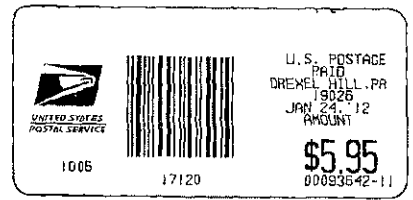
Verification:

I, Atley Natalone, 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. Section 4904 (relating to unsworn falsification to authorities).

Atley Natalone
(Signature)

1/24/12
(Date)

Mr. Atley L. Natalone
113 James Dr
Havertown PA 19083-4919



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CONFIRMATION™



3200 0003 0476 2468

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

THIS HAS BEEN SCANNED

Attempted
 Delivered

