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February 17, 2012

Via FedEx Overnight Delivery

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

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FEB 17 2012

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

**RE: James Munro v. PECO Energy Company
Docket No. C-2010-2214718**

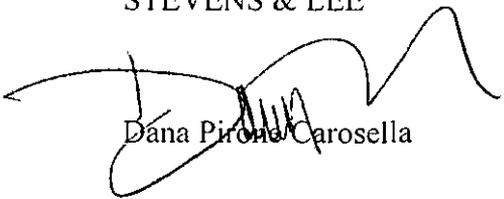
Dear Secretary Chiavetta:

Enclosed for filing on behalf of PECO is an original and nine copies of its Reply Exceptions. 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 Pirona Carosella

Encl.

cc: James Munro 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**

JAMES MUNRO
Complainant

v.

PECO ENERGY COMPANY
Respondent

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Docket No. C-2010-2214718

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~~FEB 17 2012~~

**REPLY EXCEPTIONS
OF PECO ENERGY COMPANY**

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

Pursuant to 52 Pa.Code §5.535, PECO Energy Company ("PECO") hereby replies to the Exceptions of the Complainant James Munro ("Complainant") as follows:

I. PROCEDURAL HISTORY

On December 7, 2010, Complainant filed a Formal Complaint ("Complaint") against PECO with the Pennsylvania Public Utility Commission ("Commission"), alleging that there are incorrect charges on his electric bill from PECO and that he is disputing "the \$3,612.00 amount of the past due amount." See Complaint ¶ 5.

On January 3, 2011, PECO filed Preliminary Objections to the complaint on the grounds of insufficient specificity. PECO asked that Complainant should be required to file an amended complaint so that it might know, specifically, which actions Complainant believes were improper or unlawful.

Pursuant to a Motion Judge Assignment Notice dated January 10, 2011, the matter was assigned to Administrative Law Judge ("ALJ") Eranda Vero.

By letter dated January 11, 2011, Complainant submitted additional information in response to PECO's Preliminary Objection, which the ALJ has treated as an amended

complaint. In Complainant's response, he alleged that he sold the property at 1902 Weatherstone Drive, Paoli, PA and that the buyer (according to the settlement sheet) was supposed to pay PECO the sum of \$200.00. Complainant also states in his response that his old balance had increased to \$3,829.03 due to charges for interest and penalties. This amount is different from the "disputed amount" of \$3,612.00 which Complainant identifies in his Complaint.

On February 4, 2011, the ALJ issued an Order denying PECO's Preliminary Objections and ordered PECO to file an Answer within 20 days of the issuance of the Order.

In fact, on January 31, 2011, PECO filed its Answer and New Matter. In its New Matter, PECO alleges that: a) Complainant is improperly attempting to dispute charges for which he previously admitted liability, b) PECO has properly credited Complainant's account for all payments, c) absent a change in income, Complainant is not eligible for a new payment arrangement as he has already defaulted on two Commission-issued payment arrangements, d) any billing dispute which is more than four (4) years before the filing of the Complaint is barred by the provisions of 66 Pa.C.S.A. § 1312, and e) any disputed acts which occurred more than three (3) years before the filing of the Complaint are barred by the provisions of 66 Pa. C.S.A. §3314. See New Matter ¶¶ 20-24.

By Hearing Notice dated February 8, 2011, the parties were notified of an in-person hearing scheduled for Wednesday, March 16, 2011, at 10:00 a.m.

On February 16, 2011, a Prehearing Order was issued confirming the date, time, and location of the hearing as well as information concerning the procedural aspect of the hearing, including submitting documents at the hearing.

On March 9, 2011, Complainant faxed a request for a hearing continuance due to medical reasons. By letter dated March 9, 2011, the ALJ granted Complainant's request for continuance.

On March 15, 2011, the Commission issued a Hearing Cancellation/Reschedule Notice which established a new hearing date of for April 29, 2011. Because of a scheduling conflict with the ALJ, a second Hearing Cancellation/Reschedule Notice was issued on March 17, 2011, notifying the parties that the in-person initial hearing would be held on Thursday, April 21, 2011, at 1:30 p.m.

On April 21, 2011, the Complainant mistakenly believed that the hearing was scheduled to begin at 10:00 a.m. and so he arrived at the Commission's Philadelphia Office at approximately 10:00 a.m. Although it was explained to Complainant that the hearing had been scheduled for 1:30 p.m. and not 10:00 a.m. as he mistakenly thought, Complainant was extremely reluctant either wait for the hearing to begin at 1:30 p.m. or to return that day in time for the hearing at 1:30 p.m.

Because PECO's counsel, Tishekia E. Williams, Esquire was already at the Commission for another hearing, Ms. Williams graciously agreed to begin the hearing in Complainant's matter as soon as the court report and ALJ were available. Consequently, the ALJ was able to accommodate Complainant and started the hearing in the instant case at approximately 10:45 a.m.

At the hearing, Complainant testified about the \$3,600 portion of his unpaid balance. Complainant further testified that on February 17, 2011, he filed with the Commission an Answer to PECO's New Matter. In this pleading, Complainant alleges that he is disputing the high that usual electric charges for the period December 2010-

January 2011 and ask that his meter be tested. In response to Complainant's testimony, PECO's counsel explained to the ALJ that PECO had not been served with Complainant's Answer to PECO's New Matter, as such, PECO did not have an opportunity to investigate the new allegations about other disputed billing and could not present its position at the hearing. (N.T. at 20).¹ Accordingly, PECO objected to any consideration of Complainant's high bill dispute during the April 21, 2011 hearing. *Id.* In order to address the Complainant's high bill dispute and in order to allow PECO an opportunity to investigate the allegations, the ALJ agreed to schedule a further hearing for the limited purpose of gathering evidence on and adjudicating Complainant's high billing dispute. (N.T. at 21-22; 85-87).

In accordance with this ruling, on August 19, 2011 the Commission issued a Hearing Notice scheduling a further hearing on Monday, October 3, 2011, at 10:00 a.m.

On September 14, 2011, the ALJ received a facsimile from the Complainant requesting a continuance of the further hearing. On September 15, 2011, the ALJ issued a letter-response to Complainant's September 14, 2011 communication denying the request for a continuance and reminding Complainant that the purpose of the further hearing was to collect evidence on and adjudicate his high billing dispute concerning the period December 2010 – January 2011.

On September 29, 2011, the ALJ received another facsimile from the Complainant requesting a continuance of the hearing because PECO had allegedly failed to test his meter and/or prepare a meter report. That day, the ALJ denied the request for a continuance.

¹All references to notes of testimony (N.T.) refer to the April 21, 2011 hearing transcript unless noted.

On October 3, 2011, the further hearing in this matter convened for the limited purpose of addressing Complainant's high bill complaint. Complainant testified on his behalf and offered one exhibit on his behalf. PECO presented testimony from Thomas Lerro, the high bill field supervisor for PECO and introduced exhibits addressing the high bill disputed. At the ALJ's request, PECO submitted a late filed exhibit regarding degree days for the Winter of 2009 to 2010, and the Winter of 2010 to 2011.

On October 5, 2011, PECO submitted the late filed exhibits to the ALJ and Complainant. Complainant did not object to the exhibits. Accordingly, the record in this matter closed on October 20, 2011.²

By Initial Decision served on January 18, 2012, the Complainant's Complaint was dismissed in its entirety and with prejudice.

On February 2, 2012, Complainant filed timely Exceptions to the Initial Decision.

PECO now files this Reply to the Exceptions of the Initial Decision.

² Admitted into evidence were the following exhibits: Complainant Exhibit 1; Complainant Exhibit F1; PECO Exhibit 1 – Complainant's Account from May 2006 to April 2011; PECO Exhibit 2 – Agreement History; PECO Exhibit 3 – Decisions Rendered by BCS on Informal Complaints filed by Complainant; PECO Exhibit 4 – History of Collection Actions on Complainant's Account; PECO Exhibit 5 – Chronology of the Address History for Complainant; PECO Exhibit 6 – Complainant's Account from May 2006 to September 2011; PECO Exhibit 7 – Electric Meter Test Form; PECO Exhibit 8 – High Bill Report and Select Meter Reading History for Meter 021945602; PECO late-filed Exhibit 9 – Degree Days for the Winter of 2009 to 2010; PECO late-filed Exhibit 10 – Degree Days for the Winter of 2010 to 2011; PECO late-filed Exhibit 11 – Meter Date Explorer for the temperatures during the period December 14, 2010 – January 18, 2011.

II. ARGUMENT

The Pennsylvania Public Utility Commission Should Adopt the Findings and Conclusions in the Initial Decision Which is Devoid of Error and Dismiss the Complaint with Prejudice.

The Complainant's first Exception, identified as "A Page 3", contends that the ALJ mischaracterized his appearance at the April 21, 2011. Complainant contends that he arrived for the hearing at the correct time and that counsel for PECO had the incorrect time. The ALJ did not err.

Pursuant to the March 17, 2011 Hearing Cancellation/Reschedule Notice served on Complainant and PECO, the hearing was rescheduled from April 29, 2011 to April 21, 2011 at 1:30 p.m. Because Complainant must have misread the Hearing Cancellation/Reschedule Notice, he (not PECO or the ALJ) arrived three and one half hours early or at 10:00 a.m.. There is no doubt that the hearing for April 21 2011 had always been scheduled for 1:30 p.m. Since Complainant's exception is not supported by the record and the ALJ correctly outlined the events as supported by the record, this exception should be denied.

Complainant's second Exception, identified as "B" challenges the ALJ's ruling that much of his testimony at the April 21, 2011 hearing was inadmissible on hearsay grounds. Specifically, Complainant believes the ALJ was incorrect in making a ruling preventing him from testifying about what a PECO employee told him in an out of court conversation about an alleged bill increase from \$812 to \$2,200.

The ALJ did not err in making this ruling. Under the Pennsylvania Rules of Evidence, hearsay is not admissible unless it satisfies one or more of the hearsay exceptions. See Pa. R. E. 801, 802, and 803. Pursuant to Pa.R.E. 801(c), hearsay is "a

statement, other than one made by the declarant (the person making the statement) while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted.” The ALJ properly disallowed Complainant to testify about what a PECO employee had allegedly told him about his bill because the PECO employee did not testify at the hearing and because Complainant did not present any reason to allow the testimony into the record under any recognized exception to the hearsay rule. See Pa.R.E. 803. As such, this exception should be denied.

The Complainant’s third Exception, identified as “C.,” contends that the ALJ and PECO’s counsel had “friendly exchanges” at the April 21, 2011 hearing and at one point “joked between themselves.” Complainant’s characterization of PECO’s counsel and the ALJ is incorrect and is not supported by the record. As such, this exception should be denied.

The Complainant’s fourth Exception, identified as “Page 15”, “Paragraph 1”, is a restatement of his allegation that a \$400 arrearage amount from a prior account increased over time into an amount due of over \$3,000. Complainant additionally avers that PECO did not inform him of the \$400 arrearage or the “escalating charges” until 2004. In the *Initial Decision* the ALJ correctly concludes that Complainant’s claim that there are incorrect charges on his electric bill dating back to 1999 is barred by the three (3) year statute of limitation found in 66 Pa. C.S.A. §3314 (a). Specifically, this provision prohibits any “action for the recovery of any penalties or forfeitures incurred under the provisions of this part, and no prosecutions on account of any matter or thing mentioned in this part, shall be maintained unless brought within three years from the date at which

the liability therefore arose, except as otherwise provided in this part.” 66 Pa. C.S.A. § 3314(a). As such, this exception should be denied.

The Complainant’s fifth Exception, identified as “Paragraph 2” and referring to page 15, paragraph 2 of the Initial Decision, is a mischaracterization of the payment agreements he had and another attempt to introduce hearsay evidence. Specifically, Complainant identifies refers to a 2008 payment agreement and discussions he allegedly had with a PECO billing representative. The record clearly reflects that Complainant received six (6) payment agreements. Four (4) of the six (6) payment agreements were with PECO and two (2) were Commission-issued payment agreements. However, contrary to Complainant’s assertion, none of the six (6) agreements were made in 2008. See Initial Decision at p. 27. Accordingly, Complainant’s exception is not supported by the record and, as such, should be denied.

The Complainant’s sixth Exception, identified as “Page 18”, is a mischaracterization of the evidence concerning the six (6) payment agreements he had either with PECO or as a result of the Commission issuing payment agreement. *Id.* Complainant has a history of broken payment arrangements and arrearage as reflected by PECO Exhibits 1 and 6 and the fact that Complainant has not paid his bills on time and for a long period of time. Accordingly, Complainant’s exception is not supported by the record and, as such, should be denied.

The Complainant’s seventh Exception, identified as “Page 25, Paragraph 1”, accurately reflects the ALJ’s finding that his consumption between January 2010 and January 2011 is only 22.06%. The ALJ correctly concluded the evidence presented about Complainant’s billing history, usage pattern (including the change in the number of

occupants in a household) and any other relevant factors may be considered when reviewing a billing dispute. Initial Decision at 21-22. Here, even though Complainant claims that he spent little time in his home during January 2011, at the further hearing Complainant testified that he was in out of his residence from January 1 through on or about January 14 or 15, 2011, when he returned to his home on a full time basis. (N.T. October 3, 2011 at 26). For the period Complainant was at the residence on a part-time basis, he maintained the heat at 66 or 67 degrees (just three degrees less than his typical temperature) because his dog was at the residence and he did not want it to be too cold. N.T. October 3, 201 at 27, 29, 30). This period of time happened to coincide with one of the coldest winters in Pennsylvania as noted by the ALJ. (N.T. October 3, 201 at 30). As such, the ALJ correctly relied upon the credible evidence of record that establishes PECO's bill for the disputed period was correct as rendered and the exception should be denied.

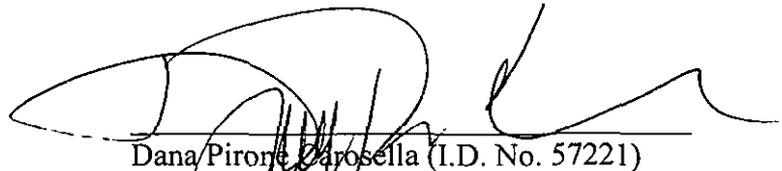
The Complainant's eighth Exception, identified as "Missing Information in Decision", pertains to settlement discussion between Complainant and PECO. Settlement discussions are usually confidential and would not typically be addressed in an Initial Decision for this reason and because Pa.R.E 408 prohibits submitting as evidence statements made in connection with settlement discussion. As such, the ALJ did not and could not have considered information concerning settlement discussion between Complainant and PECO and the exception should be denied.

III. CONCLUSION

For all the foregoing reasons, PECO requests that the Exceptions of James Munro be denied and the Initial Decision of Administrative Law Judge Eranda Vero be approved in its entirety.

WHEREFORE, PECO Energy Company respectfully requests that the Exceptions of Complainant be denied and the Initial Decision be approved in its entirety and the Commission grant such other relief that is just and appropriate under the circumstances.

Respectfully submitted,



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Counsel for PECO Energy Company

Dated: February 17, 2012

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

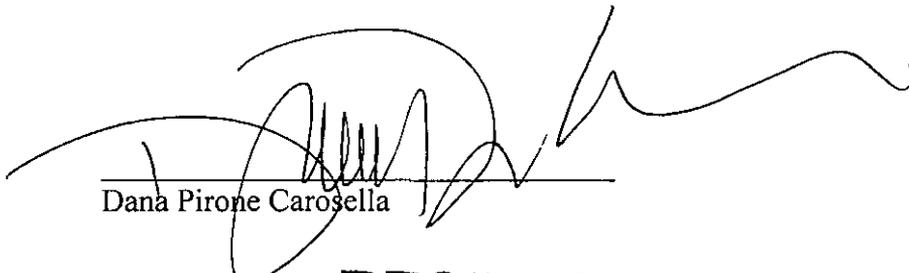
JAMES MUNRO	:	
Complainant	:	
v.	:	Docket No. C-2010-2214718
	:	
PECO ENERGY COMPANY	:	
Respondent	:	

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of the foregoing Reply Exceptions upon the parties listed below, in accordance with the requirements of 52 Pa.Code §1.54 (relating to service by a party).

VIA Federal Express

James Munro
21 Algonquin Ct.
Wayne, PA 19087



Dana Pirone Carosella

DATED: February 17, 2012

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PA PUBLIC UTILITY COMMISSION
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