

Legal Department

Exelon Business Services Company
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February 22, 2012

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

**Re: Donald C. LeLand III v. PECO Energy Company
PUC Docket No. F-2011-2239324**

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)
<u>X</u>	Motion for Judgment on the Pleadings (1 original)
—	Preliminary Objection (1 original)
—	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.

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

DONALD C. LeLAND III	:	
Complainant	:	
v.	:	DOCKET NO. F-2011-2239324
	:	
PECO ENERGY COMPANY	:	
Respondent	:	

NOTICE TO PLEAD

Pursuant to 52 Pa. Code §§ 5.102(a) you are hereby notified that, if you do not file a written response denying or correcting the enclosed Motion of PECO Energy Company, within 20 days from service of this notice, the Commission may make a ruling not in your favor and your Complaint may be dismissed. All pleadings, such as a Reply to Motion, must be filed with the Secretary of the Pennsylvania Public Utility Commission, with a copy served to counsel for PECO Energy Company, Tishekia Williams, and where applicable, the Administrative Law Judge presiding over the issue.

File with:
Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, Second Floor
Harrisburg, PA 17120

With a copy to:
Tishekia Williams, Esquire
PECO Energy Company
2301 Market Street, S-23
Philadelphia, PA 19103

Dated at Philadelphia, PA, February 22, 2012



Tishekia Williams
Counsel for PECO Energy Company
2301 Market Street S-23
Philadelphia, PA 19101-8699
215-841-6841
Tishekia.williams@exeloncorp.com

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

DONALD C. LELAND, III	:	
Complainant	:	
	:	
v.	:	DOCKET NO. F-2011-2239324
	:	
PECO ENERGY COMPANY	:	
Respondent	:	

**RESPONDENT, PECO ENERGY COMPANY'S
MOTION FOR JUDGMENT ON THE PLEADINGS**

PECO Energy Company (hereafter "PECO" or the "Company"), pursuant to 52 Pa. Code § 5.102, respectfully requests that your Honorable Commission dismiss the Complaint because Complainant fails to state a claim upon which relief can be granted.

1. On or about June 1, 2010, Donald LeLand (hereafter "Complainant") filed a Formal Complaint against Respondent, PECO Energy Company at Docket No. F-2010-2181089 alleging incorrect charges on his bill. Specifically, the Complainant disputed a revenue protection tampering fee assessed to his account.

2. On or about July 1, 2010, PECO did file an Answer denying the material allegations in the complaint.

3. By hearing notice dated September 16, 2010, a hearing was scheduled for Friday, October 8, 2010. The hearing convened as scheduled.

4. The Complainant was present at the October 8, 2010 hearing and represented his own interest. PECO Energy was also present, represented by counsel and offered the testimony of two witnesses.

5. On November 18, 2010, an Initial Decision (“ID”) was rendered dismissing the formal complaint. The presiding officer determined that the Complainant failed to meet his burden of proof. A copy of the initial decision is attached as Exhibit 1.

6. The Public Utility Commission (‘the Commission’) entered its Final Order on January 7, 2011. A copy of the Final Order is attached as Exhibit 2.

7. On January 14, 2011, the Complainant filed exceptions to the ID.

8. On May 9, 2011, the Commission entered an Opinion and Order which upheld the ID. A copy of the Opinion and Order is attached as Exhibit 3.

9. On or about May 4, 2011, Complainant has filed a second Formal Complaint at docket number F-2011-2239324.

10. On May 24, 2011, Respondent timely filed Preliminary Objections in response to the Complaint.

11. On October 13, 2011, the Commission issued an Interim Order Directing Complainant to File an Amended Complaint (“Interim Order”). A copy of the Interim Order is attached as Exhibit 4.

12. Three (3) months have passed. To date, the Complainant has not filed an Amended Complaint as directed by the Interim Order, which is an independent ground for dismissal of the 2011 Complaint at docket number F-2011-2239324.

13. However, by contacting the Commission, the Respondent did learn that on November 8, 2011, the Complainant filed a letter with the Commission. A copy of the letter is attached at Exhibit 5.

14. Upon learning of the letter, the undersigned did contact the Complainant to request a copy of the letter and discuss the complaint. The Complainant did provide the Respondent with a copy of the letter on November 15, 2011.

15. No additional filing has been made by the Complainant in this matter.

16. Upon information and belief, the letter was intended as an Amended Complaint as required by the Interim Order. The letter makes clear that the Complainant is disputing the outcome of the October 8, 2010 hearing. *See* Exhibit 5 attached hereto.

17. No hearing has been scheduled in this matter.

18. The Commission's regulations at 52 Pa. Code §5.102(a) permits 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.

19. Under 52 Pa. Code §5.102(d)(1), 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.

20. 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).

21. However, the Commission needn't accept "unwarranted inferences from facts, argumentative allegations, or expressions of opinions." *Feingold v. McNulty*, 2009 Phila. Ct. Com. Pl LEXIS 167.

22. 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).

23. Despite the Complainant's procedural defects, a hearing is not necessary in this matter because the Complainant would not benefit from an opportunity to verbally articulate his dispute.

24. The 2011 Complaint is legally insufficient and should be dismissed on the grounds of res judicata.

25. The doctrine of res judicata operates to prevent re-litigation of claims already litigated on the merits. As stated by the Commission in *Frank Tomazin v. Pennsylvania-American Water Company*, 1997 Pa. PUC Lexis 52 (1997), "the policies underlying the doctrine of res judicata are minimizing judicial energy devoted to individual cases, establishing certainty and respect for court judgments, and protecting the party relying on the prior adjudication from vexatious litigation."

26. The doctrine of res judicata, which is also known as claim preclusion, holds that a final judgment on the merits by a court of competent jurisdiction will bar any future action on the same cause of action between the parties and their privies. *Hopewell Estates, Inc. v. Kent*, 435 Pa. Superior Ct. 471. 476, 646 A.2d 1192 (1994).

27. The doctrine of res judicata applies to cases before the Commission. See, *O'Toole v. Bell Telephone Co. of Pennsylvania, Inc.*, 77 Pa. P.U.C. 98, 104 (1992).

28. The doctrine of res judicata reflects the refusal of the law to tolerate the re-litigation of a matter decided by a court of competent jurisdiction. For the doctrine to prevail four conditions must be met:

- (1) Identity of issues;
- (2) Identity of causes of action;
- (3) Identity of persons and parties to the action; and
- (4) Identity of the quality and capacity of the parties suing or sued.

Day v. Volkswagenwerk Aktiengesellschaft, 318 Pa. Superior Ct. 255, 474 A.2d 1313, 1316, 1317 (1983).

29. In the present case all four elements of res judicata are met.

30. Clearly, the parties (Donald LeLand and PECO Energy Company) are identical in both Complaints.

31. What's more, the thing sued upon is identical in both Complaints. Both the 2010 and 2011 Complaints related to the revenue protection fee that was applied to the Complainant's account. The Complainant alludes to this in his 2011 complaint, and explicitly states the same in the November 2011 letter to the Commission.

32. The cause of action is identical. In both Complaints the Complainant is alleging that the revenue protection charge is incorrect and/or unjustified. The Complainant continues to argue that he did not tamper with this service.

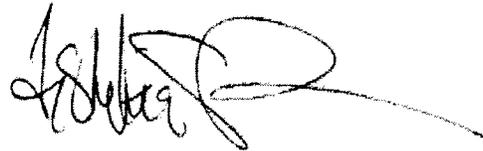
33. Finally, the quality and capacity of the parties is identical in both Complaints. The Complainant is the electric customer in both Complaints, and PECO is the public utility providing service to the Complainant.

34. The Initial Decision in the prior Complaint case explicitly disposed of this issue. By Order entered May 9, 2011, the Commission upheld the ID that the Complainant seeks to attack.

35. PECO Energy avers that the complaint is barred by the doctrine of res judicata and should be dismissed on those grounds.

WHEREFORE, PECO Energy Company respectfully requests that your Honorable Commission dismiss the instant complaint as it fails to state a claim upon which relief can be granted.

Respectfully Submitted,



Tishekia Williams
Counsel for PECO Energy Company
2301 Market Street, S23-1
P.O. Box 8699
Philadelphia, PA 19101-8699
(215) 841-6841
Fax: 215.568.3389
tishekia.williams@exeloncorp.com

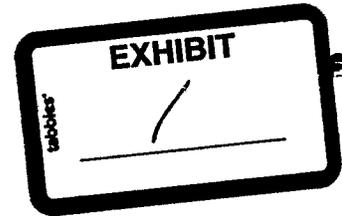


COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA PUBLIC UTILITY COMMISSION
P.O. BOX 3265, HARRISBURG, PA 17105-3265

IN REPLY PLEASE
REFER TO OUR FILE

ISSUED: November 18, 2010

F-2010-2181089



TISHEKIA E WILLIAMS ESQUIRE
EXELON BUSINESS SERVICES COMPANY
2301 MARKET STREET/S23-1
P O BOX 8699
PHILADELPHIA PA 19101-8699

Donald LeLand
v.
PECO Energy Company

TO WHOM IT MAY CONCERN:

Enclosed is a copy of the Initial Decision of Administrative Law Judge Ky Van Nguyen. This decision is being issued and mailed to all parties on the above specified date.

If you do not agree with any part of this decision, you may send written comments (called Exceptions) to the Commission. Specifically, an original and nine (9) copies of your signed exceptions **MUST BE FILED WITH THE SECRETARY OF THE COMMISSION 2ND FLOOR, KEYSTONE BUILDING, 400 NORTH STREET, HARRISBURG, PA OR MAILED TO P.O. BOX 3265, HARRISBURG, PA 17105-3265, AND A COPY IN THE HANDS OF THE OFFICE OF SPECIAL ASSISTANTS, 3RD FLOOR, AND A COPY IN THE HANDS OF EACH PARTY OF RECORD within twenty (20) days of the issuance date of this letter.** 52 Pa. Code §1.56(b) cannot be used to extend the prescribed period for the filing of exceptions/reply exceptions. A certificate of service shall be attached to the filed exceptions.

Replies to exceptions, if any, must be served on the Secretary of the Commission, Office of Special Assistants, and each party of record, in the manner described above, within **ten (10) days** of the date that the exceptions are due.

Exceptions and reply exceptions shall obey 52 Pa. Code 5.533 and 5.535 particularly the 40-page limit for exceptions and the 25-page limit for replies to exceptions. Exceptions should clearly be labeled as "EXCEPTIONS OF (name of party) - (protestant, complainant, staff, etc.)".

If no exceptions are received within **twenty (20) days**, the decision of the Administrative Law Judge may become final without further Commission action. You will receive written notification if this occurs.

Parties are also requested to provide the Commission's Office of Special Assistants with a copy of the exceptions/reply exceptions on CD_ROM or DVD, in Microsoft Word 2007 format. If Word 2007 is not available, any Microsoft Office compatible format is acceptable including PDF.

Very truly yours,

Rosemary Chiavetta
Secretary

Encls.
Certified Mail
Receipt Requested

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Donald LeLand	:	
	:	
v.	:	F-2010-2181089
	:	
PECO Energy Company	:	

INITIAL DECISION

Before
Ky Van Nguyen
Administrative Law Judge

HISTORY OF THE PROCEEDINGS

On June 1, 2010, Donald LeLand (Complainant) filed a complaint with the Pennsylvania Public Utility Commission (Commission) against PECO Energy Company (Respondent). In the complaint, the Complainant essentially stated that he was not responsible for the meter being tampered with and that all the information of electric diversions was collected by unreliable persons who have nothing to do with the Respondent's business. He asked that the Commission investigate the Respondent's practice.

On July 1, 2010, the Respondent filed an answer to the complaint. The Respondent stated that on January 29, 2009, the Complainant's electric meter was replaced because his old meter was tampered with and that on July 22 and October 13, 2009, it found the Complainant's meter was again tampered with. It further stated that it assessed a meter tampering fee of \$230 to the Complainant to cover the cost of the time and materials used in correcting the diversions.

On October 8, 2010, a hearing was held on the complaint. The Complainant proceeded unrepresented. He testified on his own behalf and introduced no exhibits into the record. The Respondent was represented by Tishekia Williams, Esquire, who presented the testimony of one witness and introduced two exhibits into the record.

The record closed at the conclusion of the hearing on October 8, 2010.

FINDINGS OF FACT

1. The Complainant is a residential customer of the Respondent and takes service at 427 W. Winona Street, Philadelphia, Pennsylvania (N.T. 4, 5).
2. When receiving a signal from the Complainant's meter indicating that the meter did not work, on January 29, 2009, the Respondent dispatched a Revenue Protection Technician, Mr. Ralph Colon, to the Complainant's home. Mr. Colon found that the Complainant had a digital meter but that the meter had no display on the screen. He further found the pot latch (the potential latch) in the meter open, which caused the flow of the current not to be registered on the meter. Mr. Colon replaced the old meter with a new one (N.T. 17-19, 21, 22; PECO Exhibit 1).
3. When receiving a report from a vendor indicating that the Complainant's meter had a problem, on October 13, 2009, the Respondent dispatched a Revenue Protection Technician, Mr. Ralph Colon again, to the Complainant's home. Mr. Colon found that the barrel lock on the meter was cut off, that a line/load jumper was installed in the meter board, thus bypassing the meter. He also found that one of the meter blades on the low side was covered with tape preventing the flow of the current not to register to the meter. He then removed the tape and the line/load jumper from the meter and installed a new side cap over the barrel lock. He also took the picture of the cut barrel lock and the line/load jumper (19-21, 22; PECO Exhibit 2).

4. When a meter is not registering, it sends a signal to the Respondent's Department of Revenue Projection for this department to investigate. The department also send out its technician to investigate when it receives a report from its vendor. Vendor is the Respondent's agency whose duty is to investigate the operation of meters (N.T. 21-23).

5. The Respondent assessed the Complainant a fee of \$230 to cover the cost of the time and materials used in correcting the electric diversions.

DISCUSSION

Section 332(a) of the Public Utility Code, 66 Pa. C.S. §332(a),¹ provides that the party seeking relief from the Commission has the "burden of proof." "Burden of proof" is a duty to establish a fact by a "preponderance of the evidence." The term "preponderance of the evidence" means that one party has presented evidence which is more convincing, by even the smallest amount, than the evidence presented by the other party. Se-Ling Hosiery v. Margulies, 364 Pa. 54, 70 A.2d 854 (1950). In other words, "preponderance" is not dependent on the number of witnesses testifying on either side but rather on the credibility of the testimony in the light of all the evidence in a case. Burch v. Reading Co., 240 F.2d 574 (3d Cir. 1957) cert. denied, 353 U.S. 965 (1957). The Pennsylvania Supreme Court has characterized a preponderance of the evidence as tantamount to a "more likely than not" inquiry. Commonwealth v. \$6,425 Seized From Esquilin, 583 Pa. 544, 555, 880 A.2d 523, 524 (2005).

Under these principles the Complainant has the burden of proving by a preponderance of the evidence that the Respondent was responsible for the problem described in his complaint.

¹ Section 332(a) of the Public Utility Code provides:

"(a) Burden of Proof. – Except as may be otherwise provided in section 315 (relating to burden of proof) or other provisions of this part or other relevant statute, the proponent of a rule or order has the burden of proof."

The Complainant simply testified that he was not responsible for the electric diversions at his residence because he did not do the diversions. He does not touch electricity. He is a psychologist. Those terms, such as pot latch (potential latch), barrel lock, and line/load jumper, are too technical for him to understand. Probably, the diversions were, he suspected, acts of vandalism of his neighbors, who wanted to make the area a farmland while he wanted to build homes to keep the integrity of the neighborhood (N.T. 9-12).

This testimony was of a general nature and contained only assertions. No matter how honest and strong his assertions are, they cannot form a basis for a finding in his favor. Mere bald assertions, personal opinions or perceptions do not constitute evidence. Pennsylvania Bureau of Corrections v. City of Pittsburgh, 516 Pa. 75, 532 A.2d 12 (1987).

The Respondent's Revenue Protection Technician, R. Colon, testified that he found evidence of tampering at the Complainant's residence, not once but twice.² On January 29, 2009, he found that the meter had no display and that the pot latch open which caused the flow of the current not to register to the meter. He then replaced the old meter with a new one. On October 13, 2009, he found that the barrel lock on the meter was cut off, that the meter seal was missing, that one of the meter blades on the low side was taped, and that a line/load jumper was installed in the meter board. On this occasion, Mr. Colon removed the tape and the line/load jumper from the meter, installed a new side clamp, and sealed the meter. He also took a picture of the cut barrel lock and the line/load jumper.

From the testimony above, I conclude that the Complainant has not carried his burden of proof.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the parties and the subject matter of this complaint.

² In its answer to the complaint, the Respondent alleged a third incident of meter tampering which occurred on July 22, 2009. But the Respondent did not testify to this incident. See the Respondent's Answer.

2. The Complainant has failed to carry his burden of proof.

ORDER

THEREFORE

IT IS ORDERED:

1. That the complaint of Donald LeLand against PECO Energy Company at Docket No. F-2010-2181089 is denied for his failure to carry his burden of proof.
2. That the record at Docket No. F-2010-2181089 be marked closed.

Date: November 2, 2010



KY VAN NGUYEN
Administrative Law Judge



PENNSYLVANIA
PUBLIC UTILITY COMMISSION
Harrisburg, PA 17105-3265

Donald LeLand

v.

PECO Energy Company

:
:
:
:
:

F-2010-2181089

FINAL ORDER

In accordance with the provisions of Section 332(h) of the Public Utility Code, 66 Pa. C.S. §332(h), the decision of Administrative Law Judge Ky Van Nguyen dated November 18, 2010, has become final without further Commission action;

THEREFORE,

IT IS ORDERED:

1. That the complaint of Donald LeLand against PECO Energy Company at Docket No. F-2010-2181089 is denied for his failure to carry his burden of proof.
2. That the record at Docket No. F-2010-2181089 be marked closed.

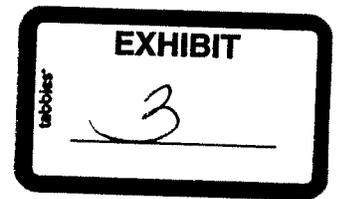
BY THE COMMISSION,

A handwritten signature in black ink, appearing to read "Rosemary Chiavetta".

Rosemary Chiavetta
Secretary

(SEAL)

ORDER ENTERED: January 7, 2011



**PENNSYLVANIA
PUBLIC UTILITY COMMISSION
Harrisburg, PA 17105-3265**

Public Meeting held May 5, 2011

Commissioners Present:

Robert F. Powelson, Chairman
John F. Coleman, Jr., Vice Chairman
Tyrone J. Christy
Wayne E. Gardner
James H. Cawley

Donald LeLand

F-2010-2181089

v.

PECO Energy Company

OPINION AND ORDER

BY THE COMMISSION:

Before the Pennsylvania Public Utility Commission (Commission) for consideration and disposition is a Petition for Reconsideration (Petition) filed by Donald LeLand (Complainant) on January 14, 2011,¹ to the Commission's Final Order, entered on January 7, 2011, that adopted the Initial Decision (I.D.) of Administrative Law Judge (ALJ) Ky Van Nguyen in this proceeding.

¹ The Complainant filed a letter in disagreement with the ALJ's I.D. We shall consider the Complainant's letter as a Petition for Reconsideration since it was filed after the Commission entered its Final Order adopting the Administrative Law Judge's Initial Decision in this proceeding.

History of the Proceeding

On June 1, 2010, the Complainant filed a Formal Complaint (Complaint) with the Commission against PECO Energy Company (PECO or Respondent). In the Complaint, the Complainant stated that he was not responsible for the tampering associated with his electric meter his electric meter and that all the information of electric diversions was collected by unreliable persons who have nothing to do with the Respondent's business. The Complainant asked that the Commission investigate the Respondent's practice. I.D. at 1.

On July 1, 2010, PECO filed an answer to the Complaint stating that on January 29, 2009, it replaced the Complainant's electric meter because of tampering that occurred with the Complainant's old meter. PECO also indicated that on July 22 and October 13, 2009, the Complainant's meter again showed signs of tampering. PECO stated that it assessed a meter tampering fee of \$230 to the Complainant to cover the cost of the time and materials used in correcting the diversions. I.D. at 1.

On October 8, 2010, a hearing was held on the Complaint before ALJ Nguyen. The Complainant appeared *pro se*, testified on his own behalf, and introduced no exhibits into the record. PECO was represented by counsel, presented the testimony of one witness and introduced two exhibits, which were admitted into the record. The record closed at the conclusion of the hearing on October 8, 2010. I.D. at 2.

In his Initial Decision, issued on November 18, 2010, ALJ Nguyen denied the Complaint due to the Complainant's failure to carry his burden of proof. By Final Order entered on January 7, 2011, the Commission adopted the ALJ's Initial Decision without further action. On January 14, 2011, the Complainant filed a letter in disagreement with the ALJ's I.D.

Background

During the hearing, the Complainant testified that he was not responsible for the electric diversions created at his residence. The Complainant claimed that he does not touch electricity and that the electric diversions were probably acts of vandalism caused by his neighbors, who wanted to make the area a farmland while he wanted to build homes to keep the integrity of the neighborhood. I.D. at 4; Tr. at 9-12.

PECO's witness R. Colon, a Revenue Protection Technician, testified that he found evidence of tampering with the Complainant's meter twice,² on January 29, 2009, and again on October 13, 2009. On the first tampering, Mr. Colon testified that the pot latch on the meter was opened causing the flow of current not to register to the Complainant's meter. A new meter, therefore, was installed. On the October 13 tampering, Mr. Colon testified that he found that the barrel lock on the meter was cut off, the meter seal was missing, one of the meter blades was taped, and a line/load jumper was installed in the meter board. On this occasion, Mr. Colon removed the tape and the line/load jumper from the meter, installed a new side clamp, and sealed the meter. Mr. Colon took a picture of the cut barrel lock and the line/load jumper. I.D. at 4.

Based on this evidence, ALJ Nguyen concluded that the Complaint should be denied because the Complainant did not meet his burden of proof. I.D. at 4.

² In its Answer to the Complaint, PECO alleged a third incident of meter tampering occurred on July 22, 2009. PECO did not testify to this incident. *See* Respondent's Answer.

Discussion

The ALJ made five Findings of Fact and reached two Conclusions of Law. The Findings of Fact and Conclusions of Law are incorporated herein by reference and are adopted without comment unless they are either expressly or by necessary implication rejected or modified by this Opinion and Order.

The Public Utility Code (Code) establishes a party's right to seek relief following the issuance of our final decisions pursuant to Subsections 703(f) and (g), 66 Pa. C.S. §§ 703(f) and 703(g), relating to rehearings, as well as the rescission and amendment of orders. Such requests for relief must be consistent with Section 5.572 of our Regulations, 52 Pa. Code § 5.572, relating to petitions for relief following the issuance of a final decision. Section 5.572(a), 52 Pa. Code § 5.572(a) provides that:

Petitions for rehearing, reargument, reconsideration, clarification, rescission, amendment, supersedeas or the like shall be in writing and shall specify, in numbered paragraphs, the findings or orders involved, and the points relied upon by petitioner, with appropriate record references and specific requests for findings or orders desired.

The standards for granting a Petition for Reconsideration or Modification were set forth in *Duick v. Pennsylvania Gas and Water Company*, 56 Pa. PUC 553, 1982 Pa. P.U.C. LEXIS 4 (1982). *Duick* held that a petition for rehearing under Subsection 703(f) of the Code must allege newly discovered evidence not discoverable through the exercise of due diligence prior to the close of the record. *Duick* at 558. A petition for reconsideration under Subsection 703(g), however, may properly raise any matter designed to convince us that we should exercise our discretion to amend or rescind a prior order, in whole, or in part. Furthermore, such petitions are likely to succeed only when they raise "new and novel arguments" not previously heard or considerations which appear to have been overlooked or not addressed. *Duick* at 559. A petition seeking

reopening of the record (more properly one for rehearing) may be entertained as a petition for reconsideration, under the provisions of 66 Pa C.S. § 703(g), if the newly discovered evidence was not in existence, or was not discoverable through the exercise of due diligence, prior to the expiration of the time within which to file a petition for rehearing, under the provisions of 66 Pa C.S. § 703(f). *Id.*

In his Petition, the Complainant states that he disagrees with the ALJ's Initial Decision. Initially, the Complainant appears to aver that he did not receive any notification regarding the ALJ's issuance of an I.D. or of the Final Order. Additionally, the Complainant suggests that the ALJ based his findings on the evidence presented by PECO's witness and that the evidence in total was disallowed. The Complainant requests that PECO's charges to him be dismissed. Petition at 1-2.

On review of the Petition, we find that it fails to meet the standards to modify or rescind a Commission Order that are set forth in *Duick, supra*. The Complainant's claim that it did not receive notification of the Initial Decision or of the Final Order in this proceeding are not supported by the record. The Commission's records indicate that the Complainant was served with the Final Order and the Initial Decision, as well as accompanying instructions regarding the Commission's procedure for filing Exceptions to the Initial Decision.

Other than his general disagreement with the ALJ's decision and the evidence which the ALJ properly relied upon, the Complainant has not presented any "new and novel arguments" that the Commission has not previously heard and addressed. As such, we shall deny the Complainant's Petition for Reconsideration.

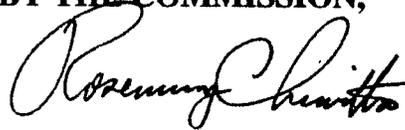
Conclusion

Based on the above discussion, we shall deny the Complainant's Petition;
THEREFORE,

IT IS ORDERED:

1. That the Petition for Reconsideration filed on January 7, 2011, by Donald LeLand to Administrative Law Judge Ky Van Nguyen's Initial Decision, is hereby denied.
2. That this proceeding shall be marked closed.

BY THE COMMISSION,



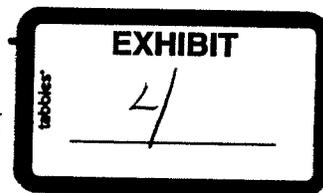
Rosemary Chiavetta
Secretary

(SEAL)

ORDER ADOPTED: May 5, 2011

ORDER ENTERED: May 9, 2011

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION



Donald C. Leland, III

v.

PECO Energy Company

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F-2011-2239324

**FIRST INTERIM ORDER DIRECTING COMPLAINANT TO
FILE AN AMENDED FORMAL COMPLAINT**

On April 22, 2011, Donald C. Leland, III (“Complainant”) filed a formal complaint against PECO Energy Company (“Respondent”) with the Pennsylvania Public Utility Commission (“Commission”), Docket No. F-2011-2239324. Complainant checked the “Other” box on the formal complaint form. Complainant then avers as follows:

I am being charged, the price keeps going up and there is no evidence of an infraction by me. I have been found at fault because I can’t prove a negative exists.

As “Relief,” Complainant requests “[d]ismiss all charges and accusations.”

On May, 24, 2011, Respondent filed Preliminary Objections of Respondent, PECO Energy Company (“Preliminary Objections”). Respondent attached a Notice to Plead to the Preliminary Objections. Complainant did not answer the Preliminary Objections or file an amended formal complaint.

Commission regulations permit the filing of preliminary objections. 52 Pa. Code §§ 5.101(a)(1)-(6). Preliminary objection practice before the Commission is similar to Pennsylvania civil practice respecting preliminary objections. *Equitable Small Transportation Intervenors v. Equitable Gas Company*, 1994 Pa. PUC LEXIS 69, Docket No. C-00935435 (July 18, 1994).

Commission regulations provide:

§ 5.101. Preliminary objections.

(a) *Grounds.* Preliminary objections are available to parties and may be filed in response to a pleading except motions and prior preliminary objections. Preliminary objections must be accompanied by a notice to plead, must state specifically the legal and factual grounds relied upon and be limited to the following:

- (1) Lack of Commission jurisdiction or improper service of the pleading initiating the proceeding.
- (2) Failure of a pleading to conform to this chapter or the inclusion of scandalous or impertinent matter.
- (3) Insufficient specificity of a pleading.
- (4) Legal insufficiency of a pleading.
- (5) Lack of capacity to sue, nonjoinder of a necessary party or misjoinder of a cause of action.
- (6) Pendency of a prior proceeding or agreement for alternative dispute resolution.

In deciding preliminary objections, the Commission must determine whether, based on well-pleaded factual averments of the complainant, recovery or relief is possible. *Dep't of Auditor General, et al v. SERS, et al.*, 836 A.2d 1053, 1064 (Pa.Cmwlt. 2003); *P.J.S. v. Pa. State Ethics Comm'n*, 669 A.2d 1105 (Pa.Cmwlt. 1996). Any doubt must be resolved in favor of the non-moving party by refusing to sustain the preliminary objections. *Boyd v. Ward*, 802 A.2d 705 (Pa.Cmwlt. 2002). All of the non-moving party's averments in the complaint must be viewed as true for purposes of deciding the preliminary objections, and only those facts specifically admitted may be considered against the non-moving party. *Ridge v. State Employees' Retirement Bd.*, 690 A.2d 1312 (Pa.Cmwlt. 1997).

Respondent's preliminary objection is that the formal complaint filed by Mr. Leland is legally insufficient. *See* 52 Pa. Code §5.101(a)(4). Respondent cites to the Commission's regulation which sets forth the required contents for a formal complaint,

52 Pa. Code §5.22. Specifically, Respondent contends that Mr. Leland's formal complaint does not include a clear and concise statement of the act or omission being complained of including the result of any informal complaint or informal investigation. 52 Pa. Code §5.22(a)(5).

In its Preliminary Objections, specifically paragraph 5 and paragraph 6, Respondent explains the reasons for its objection. In paragraph 5, Respondent states that Mr. Leland's complaint should contain information specific enough to allow Respondent to understand the allegations and to prepare a coherent response. Preliminary Objections ¶ 5. In paragraph 6, Respondent contends that Mr. Leland has failed to provide sufficient facts in his formal complaint to allow PECO to formulate an appropriate response without speculating as to the issues under dispute. Preliminary Objections ¶ 6.

Respondent's contentions in paragraph 5 and paragraph 6 of the Preliminary Objections are correct. The formal complaint clearly does not set forth the facts upon which it is based with any specificity. At this stage, the undersigned concludes that a proper, additional preliminary objection would have been "insufficient specificity of pleading" pursuant to 52 Pa. Code §5.101(a)(3). Mr. Leland's formal complaint does not explain what this dispute is about or what relief he is seeking from the Commission.

Respondent's preliminary objection based on legal insufficiency, 52 Pa. Code §5.101(a)(4), will be held in abeyance. Respondent cannot file an answer to Mr. Leland's formal complaint at this time because of the lack of specificity and the undersigned will not require Respondent to do so. *See* 52 Pa. Code §5.101(e)(1)&(2).

Mr. Leland, who is representing himself in this proceeding, will be afforded an opportunity to file an amended formal complaint at Docket No. F-2011-223923, explaining what his complaint is about in detail and also setting forth the relief he is requesting from the Commission.

In the event that an amended formal complaint is not filed with the Commission's Secretary's Bureau by Mr. Leland on or before November 8, 2011 in compliance with this First Interim Order the complaint shall be dismissed with prejudice.

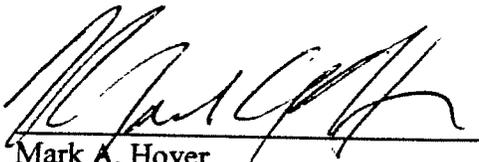
If an amended complaint is filed on or before November 8, 2011, Respondent's Preliminary Objections filed on May 24, 2011 will be rendered moot. *See* 52 Pa. Code §5.101(e)(2); 52 Pa. Code §5.91.

THEREFORE,

IT IS ORDERED:

1. That Complainant, Donald C. Leland, III, shall file and serve an amended formal complaint with the Pennsylvania Public Utility Commission which includes on the first page thereof "Docket No. F-2011-2239324" on or before November 8, 2011.
2. That failure to file and serve an amended formal complaint in compliance with this First Interim Order shall result in dismissal of the pending formal complaint, with prejudice, without further action by the Commission.
3. That upon timely filing and service of an amended formal complaint by Donald C. Leland, III, Respondent, PECO Energy Company shall timely file and serve a responsive pleading.

Date: October 13, 2011


Mark A. Hoyer
Administrative Law Judge

F-2011-2239324 - DONALD C. LELAND, III v. PECO ENERGY COMPANY

DONALD L LELAND III
427 W WINONA STREET
PHILADELPHIA PA 19144
215.438.8810

TISHEKIA WILLIAMS ESQUIRE
EXELON BUSINESS SERVICES COMPANY
2301 MARKET STREET S23-1
PO BOX 8699
PHILADELPHIA PA 19101-8699
215.841.6841

11/03/2011

- Amd cmp ✓



DONALD C. LELAND III

F-2011-2239324

V
PECO ENERGY CORP.

An informal complaint (BES# 002624073) filed with P.U.C. on November 25, 2009 which resulted in a hearing on October 8, 2010, at 1:00 P.M. in an 8TH floor Hearing Room at 801 Market St., Phila., Pa.

At this hearing a PECO field technician presented pictures allegedly showing evidence of, "Theft of Service," at my property, i.e., 427 W. Winona St. Philadelphia, Pa. 19144.

The field technician verbally alluded to finding various discrepancies, at different times, with the electric meter at my property.

The field technician could not join his pictures or verbal testimony with me or my property and all alleged evidence was inadmissible.

I am asking for dismissal of all charges and allegations relating to this matter. Donald C. Leland

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

DONALD C. LeLAND III

:

v.

:

DOCKET NO. F-2011-2239324

:

PECO ENERGY COMPANY

:

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 22, 2012



Tishekia Williams

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

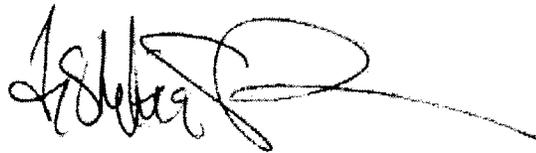
DONALD C. LeLAND III	:	
	:	
v.	:	DOCKET NO. F-2011-2239324
	:	
PECO ENERGY COMPANY	:	

CERTIFICATE OF SERVICE

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

DONALD C. LeLAND III
427 West Winona Street
Philadelphia, PA 19144

Dated at Philadelphia, Pennsylvania, February 22, 2012.



Tishekia Williams
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