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February 27, 2012

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

Re: Sandra Armitage v. PECO Energy Company
Docket No. C-2012-2287021

Dear Secretary Chiavetta:

Enclosed for filing on behalf of PECO is an original of its Preliminary Objection 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: Sandra Armitage w/enclosures

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

A PROFESSIONAL CORPORATION

SL1 1135131v1 101815.00341

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

SANDRA ARMITAGE	:	
Complainant	:	
	:	
v.	:	Docket No. C-2012-2287021
PECO ENERGY COMPANY	:	
Respondent	:	

NOTICE TO PLEAD

To: *Sandra Armitage*

You are hereby notified to file a written response to the attached Preliminary Objection of PECO within ten (10) days from the date of service of this notice. If you do not file a written response denying or correcting the enclosed Preliminary Objection within ten(10) 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 Preliminary Objections, 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 Preliminary Objection could result in the dismissal of your case.

STEVENS & LEE



Dana Pirone Carosella (I.D. No. 57221)
Michael A. Gruin (I.D. No. 78625)
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Tishekia Williams
PECO Energy Company
2301 Market Street, S23-1
PO Box 8699
Philadelphia, PA 19101-8699
(215) 841-6841
Fax: 215.568.3389

COUNSEL FOR
PECO ENERGY COMPANY

DATE: February 27, 2012

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

SANDRA ARMITAGE	:	
Complainant	:	
	:	
v.	:	Docket No. C-2012-2287021
	:	
PECO ENERGY COMPANY	:	
Respondent	:	

**PECO ENERGY COMPANY’S PRELIMINARY OBJECTION TO THE
COMPLAINT**

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

1. On February 6, 2012, PECO was served with a formal Complaint from Sandra Armitage (“Complainant”). The Complainant disputes the eventual elimination of the discounted residential electric heat rate (“Rate R-H”). A copy of the Complaint is attached as Exhibit 1.

2. PECO simultaneously filed an Answer with New Matter and the instant Preliminary Objection.

3. Pursuant to 52 Pa. Code § 5.101 preliminary objections may be filed against a complaint and dismissed for legal insufficiency. 52 Pa. Code § 5.101(a)(4).

4. The procedure before the Pennsylvania Public Utility Commission (the “PUC”) regarding the disposition of preliminary objections is similar to that utilized in Pennsylvania civil procedure.¹

5. In deciding preliminary objections, the PUC must determine, based on the factual pleadings of the petitioner, if relief or recovery is possible.²

6. A complaint must be able to recover under the law to survive a preliminary objection.³

7. All of the non-moving party’s averments must be taken as true for the sake of deciding the preliminary objection.⁴

8. The court does not, however, need to accept “unwarranted inferences from facts, argumentative allegations, or expressions of opinions.”⁵

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

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

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

² 2006 Pa. PUC Lexis 111, *7.

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

⁴ *Id.* At 7-8.

⁵ *Feingold v. McNulty*, 2009 Phila. Ct. Com. Pl. LEXIS 167, *3.

11. Here, there are no genuine issues of fact and PECO is entitled to judgment as a matter of law. Therefore, the complaint is legally insufficient and should be dismissed.

12. The Complainant disputes the phase out of PECO Energy's discounted residential electric heat rate, Rate R-H. The elimination of PECO's Rate R-h was approved by the PUC as part of PECO's Default Service Program and Rate Mitigation Plan on June 9, 2009, docket number P-2008-2062739. The plan was previously approved by the PUC and is just, reasonable and lawful.

13. By way of background, 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 transition and distribution portion.

14. The Act capped the generation portion of electric rates to ease the transitions 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 2010.⁶

15. On September 10, 2008, PECO filed its Default Service Program and Rate Mitigation Plan (DSP Petition) to establish rates, terms and conditions for the provision of default service for the period of January 1, 2011 through May 31, 2014, for who do not take service from an alternative electric generation supplier (EGS) or whose contracted generation is not delivered.

⁶ The Commission has already ruled that it lacks the authority to extend the expired rate caps. *See Tshudy v. PPL Electric Utilities Corp.*, Docket No. C-2009-2092230 (Order entered August 21, 2009) (citing 66 Pa.C.S. § 2804(4)).

16. PECO's DSP plan 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 were to occur on January 1, 2011. PECO's DSP Petition was assigned Commission Docket No. P-2008-2062739.

17. The phase out of the discounted residential electric heat rate was included as part of PECO's DSP Plan.

18. After extensive discovery, hearings, and filings of testimony and rebuttal testimony in this matter, on March 10, 2009, a Joint Petition for Settlement was filed to request approval of PECO's DSP Plan as modified by the settlement.

19. By Order entered June 2, 2009 the Commission approved the Settlement and PECO's DSP Plan, as modified by the settlement.

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

21. As the PUC recognized in *Tshudy v. PPL Electric Utilities Corp.*, Docket No. C-2009-2092230 (Order entered August 21, 2009), it may not extend the rate caps, which expired in 2010, in order to prevent a generation rate increase.

22. Additionally, the Competition Act provides that default service rates must be based on prevailing market prices, not promotional discounts or subsidies; offering reduces rates for winter heating customers would require other default service customer to subsidize the Rate R-H customers to cover the difference, and therefore would violate the Public Utility Code.

23. PUC precedent is clear and unambiguous on this issue. In *Dunham v. PPL Electric Utilities Corporation*, Docket No. C-2010-2155056, the PUC stated:

In *Diehl v. PPL Electric Utilities Corporation*, Docket No. C-2009-2149261 (Order entered April 1, 2011) (*Diehl*), we discussed the circumstances surrounding PPL's phase out of the RTS schedule:

In 2004, at Docket No. R-00049255, PPL filed a distribution rate case with the Commission. The Commission's decision in that case on rate allocation among customer classes was appealed to the Commonwealth Court. As part of its review, the Commonwealth Court interpreted the Competition Act as requiring that rates for transmission, distribution and generation each be set separately, based on the cost of serving each separate class of customers. 66 Pa. C.S. § 2804(3). The Court ruled that subsidized rates (*e.g.* the RTS rate) which do not cover their costs of service must be transitioned to cost-based rates. *See, Lloyd v. Pennsylvania Public Utility Commission, et al.*, 904 A.2d 1010 (Pa. Cmwlth. 2006). Thus, the RTS rate as it existed in the 1980s, at the time the Complainant constructed his home, could no longer continue to be offered.

1. *Diehl* at 4-5.

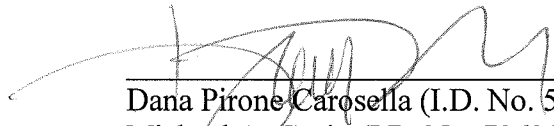
Dunham Opinion and Order, entered July 1, 2011, at 4.

24. Similar conclusions were reached in several other complaints before the PUC. *See also, Kupchinskis v. PECO Energy Company*, Docket No. C-2011-2253896; *Herting v. PPL Electric Utilities Corporation*, Docket No. C-2010-2153688, Commission Final Order entered October 6, 2011; *Brickner v. PPL Electric Utilities Corporation*, Docket No. C-2009-2105583, Commission Opinion and Order entered May 21, 2010; *Laudenslager v. Duquesne Light Company*, Docket No. C-2009-2144804, Commission Final Order entered June 29, 2011; *Sowatskey v. Duquesne Light Company*, Docket No. C-2009-2144804, Commission Final Order entered January 11, 2011.

25. Because the instant case involves the same legal question as the cases identified in paragraph 24, the outcome here should be the same. The Complaint should be dismissed as legally insufficient under 52 Pa. Code §5.101(a)(4).

WHEREFORE, PECO Energy Company respectfully requests that your Honorable Commission dismiss the Complaint.

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
Tel. (610) 205-6056
Fax (610) 371-7978

Tishekia Williams
PECO Energy Company
2301 Market Street, S23-1
PO Box 8699
Philadelphia, PA 19101-8699
(215) 841-6841
Fax: 215.568.

Dated: February 27, 2012

Zaketa, Anita D:(BSC)

From: eServe@pa.gov
Sent: Monday, February 06, 2012 10:01 AM
To: Smith, Ward L.:(BSC)
Cc: Zaketa, Anita D:(BSC)
Subject: PA PUC eServe Notice
Importance: High

Dear WARD L SMITH,

A(n) **Formal Complaint** has been served in this proceeding. This document is docketed as **C-2012-2287021**. 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.*

Exhibit 1

RECEIVED

2012 FEB 2 AM 10:08
SECRETARY'S BUREAU

PENNSYLVANIA PUBLIC UTILITY COMMISSION

Formal Complaint Form

Jan. 21, 2012

Please print in ink or type.

1. CUSTOMER (COMPLAINANT) INFORMATION

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

Name Sandra ARMITAGE

Street/P.O. Box 3144 N. Sugar Road Apt # _____

City New Hope State PA. Zip 18938

County Bucks

Daytime Telephone Number Where We Can Contact You: (215) 297-5517

E-mail Address (optional): _____

Utility Account Number 92125-01701
(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):

Philadelphia Electric (PECO)

3. TYPE OF UTILITY (check one)

- | | |
|--|--|
| <input checked="" type="checkbox"/> ELECTRIC | <input type="checkbox"/> STEAM HEAT |
| <input type="checkbox"/> GAS | <input type="checkbox"/> WASTE WATER |
| <input type="checkbox"/> WATER | <input type="checkbox"/> MOTOR CARRIER |
| (e.g.; taxi, moving company, limousine) | |
| <input type="checkbox"/> TELEPHONE | |
| (local, long distance) | |

RECEIVED
2012 JAN 25 AM 10:44
P.A.P.U.C.
SECRETARY'S BUREAU

4. **COMPLAINT** (check one)

A. **In general, what is your complaint?**

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

Forty Four years ago when we built our house my husband was an electrical contractor.

At that time (1969) PECO was pushing an all electric house (including heat) as the up and coming way to go - cleaner, efficient, less expensive and would guarantee a discount on Residential heating / electric bill.

Now starting Jan. 1, 2012 we are being penalized for having stayed with PECO's residential heating plan.

PECO needs to live up to their salesmanship years ago and return to discounting of electric heat customers.

Needless to say I'm very disappointed in PECO's choice! May this change back to the way it has been.

Sincerely,
SANDY ARMITAGE

5. RELIEF

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

By Lowering heat prices for Residential
electric heat customers. Bring
back discount for all electric
customers

RECEIVED

2012 FEB -2 AM 10:08

PA P.U.C.
SECRETARY'S BUREAU

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

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

8. LEGAL REPRESENTATION (IF ANY)

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: Sandra S. Armitage, 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).

Sandra S. Armitage (Signature) Jan. 21, 2012 (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
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~~Facsimiles and/or electronic filings of the complaint will not be accepted.~~

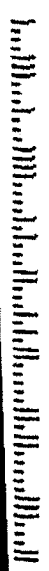
~~If you have any questions about filling out this form, please contact the Secretary's Bureau at 717-772-7777.~~

Keep a copy of your complaint for your records.

A
Ms. Sandra Amilage
3144 N. Sugan Road
New Hope, PA 18838

Commonwealth of Penna.
Pa. Public Utility Commission
P. O. Box 3265
Harrisburg, Pa. 17105-3265

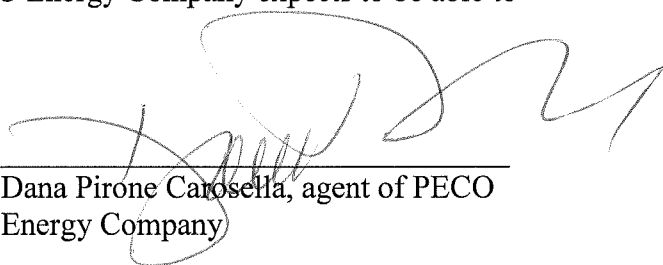
171053265



Commonwealth of Pennsylvania :
County of Philadelphia : SS

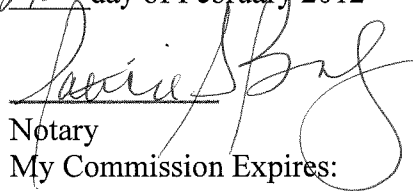
AFFIDAVIT

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.

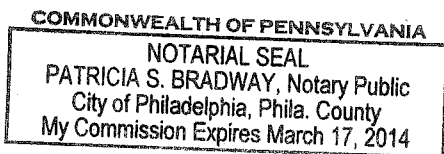


Dana Pirone Carosella, agent of PECO Energy Company

Sworn and subscribed before me this 27th day of February 2012



Notary
My Commission Expires:



**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

SANDRA ARMITAGE
Complainant

v.

PECO ENERGY COMPANY
Respondent

:
:
:
:
:
:
:

Docket No. C-2012-2287021

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of the foregoing Preliminary Objection 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

Sandra Armitage
3144 North Sungan Road
New Hope, PA 18938



Dana Pirone Carosella

DATED: February 27, 2012