

Legal Department

Exelon Business Services Company
2301 Market Street/S23-1
P.O. Box 8699
Philadelphia, PA 19101-8699

Telephone 215.841.4000
Fax 215.568.3389
www.exeloncorp.com

Direct Dial: 215.841.6841

February 29, 2012

ALJ Joel H. Cheskis
Pennsylvania Public Utility Commission
PO Box 3265
Harrisburg, PA 17105-3265

Re: John R. Starzmann v. PECO Energy Company
PUC Docket No. C-2010-2192759

Dear Judge Cheskis:

On or about January 31, 2012 the Complainant, Mr. John Starzmann filed a response to PECO Energy's Motion to Strike and a Petition to Reopen the Record so that your Honor may consider certain extra-record evidence submitted with his initial brief. Unfortunately, the undersigned was not aware of the filing until recently. Nonetheless, PECO Energy respectfully requests that your Honor consider this brief response, nunc pro tunc. This response is provided, in large part, for the Complainant's knowledge and understanding.

A review of the Petition to Reopen the Record reveals a fundamental misunderstanding of the process by the Complainant whom is appearing pro se in this matter. The Complainant's position appears to be that the information submitted in his brief is factual; therefore there should be no impediment to admitting the new information after the conclusion of the initial hearing.

Administrative agencies, like the Public Utility Commission, are required to provide due process to the parties appearing before them. This requirement is satisfied when the parties are afforded notice and the opportunity to appear and be heard. *Schneider v. Pa. PUC*, 83 Pa. Cmwlth. 306, 479 A.2d 10 (1984). Accordingly, PECO Energy is entitled to notice of all alleged violations, and a full and fair opportunity to respond and be heard regarding those allegations.

Additionally, at this stage of the case, there are no "facts" unless the allegation is admitted by the parties. All other information submitted is a mere allegation until the presiding officer makes it a finding of fact. All finding of fact must be supported by substantial evidence. *Norfolk & Western Ry. Co. v. Pa. PUC*, 489 Pa. 109, 413 A.2d 1037 (1980).

There are rules and regulations that govern the receipt of evidence in administrative proceedings, and otherwise. Specifically, 52 Pa. Code § 5.401 provides that "relevant and material evidence is admissible subject to objections on other grounds. Evidence will be excluded if (1) it is repetitious or cumulative or (2) its probative value is outweighed by the danger of unfair prejudice, confusion of the issues, considerations of undue delay or waste of time. PECO Energy is entitled to cross examine the Complainant regarding any evidence submitted, to submit rebuttable evidence and where necessary and appropriate object to the admissibility of the evidence.

While the presiding officer may call for additional evidence at any stage of the proceeding, 52 Pa. Code § 5.404, parties are not permitted to offer new evidence and allegations at any stage of the proceeding because it violates the opposing party's due process rights.

In closing, PECO Energy certainly understands that the Complainant is not an attorney. However, as his own advocate, he is subject to the rules and regulations of the Commission. While the Commission may waive its rules and regulations, such a waiver is not permitted were the opposing parties substantive or due process rights are adversely affected. If your Honor believes that it is in the public interest to receive the Complainant's new evidence and allegations, minimally, PECO Energy must be provided an opportunity to respond.

Very truly yours,

A handwritten signature in black ink, appearing to read 'Tishekia Williams', with a long horizontal flourish extending to the right.

Tishekia Williams
Counsel for PECO Energy Company