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March 28, 2012

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

**RE: Enoch Jerome v. PECO Energy Company**  
**Docket No. F-2010-2196584**

Dear Secretary Chiavetta:

Enclosed for filing on behalf of PECO is an original of its Reply Exceptions 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

  
Michael A. Grum

Encl.

cc: Enoch Jerome w/encl. (via U.S. Mail)  
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**

ENOCH JEROME,	:	
Complainant,	:	
	:	
v.	:	Docket No. F-2010-2196584
	:	
PECO ENERGY COMPANY,	:	
Respondent	:	
	:	

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**REPLY EXCEPTIONS  
OF PECO ENERGY COMPANY**

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Pursuant to 52 Pa.Code §5.535, PECO Energy Company (“PECO”) hereby replies to the Exceptions of the Complainant Enoch Jerome (“Complainant”). As set forth below, the Commission should reject the Complainant’s Exceptions and sustain the dismissal of the Complaint.

**I. PROCEDURAL HISTORY**

On August 29, 2010, Complainant filed a Formal Complaint against PECO alleging that: he owed PECO nothing; that he registered the account in question as a residential one rather than a commercial account; and that as a result of PECO having charged him at a commercial rate, rather than a residential rate, for the previous seven-plus years, he was entitled to a credit from PECO due to its error in charging him the wrong rate. The Complaint followed a decision by the Commission’s Bureau of Consumer Services (the “BCS”) that dismissed Complainant’s informal complaint, BCS Case No. 2660540. The BCS properly determined that Complainant was being charged by PECO at the residential rate for both heating and electric power as of February 18,

2010, and that PECO had no record of Complainant's account being designated a residential property prior to that date.

On September 20, 2011, PECO filed an Answer to the Complaint denying that Complainant was charged incorrectly for his service. In addition, PECO alleged in its Answer that the service property (where Complainant had requested service) was designated as a commercial property when service was established for him. As such, Complainant was properly billed at the commercial rate. PECO's Answer also noted that a retroactive adjustment to the Complainant's bill would not be appropriate, because Section 11.3 of PECO's Commission-approved Electricity Tariff states:

"The Company will not make any base rate change retroactive unless, in the Company's sole judgment, the Company failed to adequately respond to a customer's request for assistance or modification at the time of such request."

PECO's Answer also noted that the Public Utility Code (66 Pa.C.S.A. 1312) precludes the Commission from ordering retroactive relief for a period beyond four years prior to the filing of a Complaint.

On September 7, 2011, ALJ Christopher P. Pell served the parties with a Prehearing Order that listed the date and time of the Initial Hearing, and also informed the parties of the methods by which they could subpoena witnesses for, and present documents or exhibits at the Initial Hearing. Specifically, the Prehearing Order stated that the parties must bring four (4), pre-marked copies of each proposed exhibit, and that, should the parties intend to subpoena witnesses for the hearing, they should review procedures established in 52 Pa. Code § 5.421. In addition, the Prehearing Order provided that in order to subpoena witnesses, the parties must submit a written application to the Administrative Law Judge sufficiently in advance of the

hearing date so that the other party would have the required ten (10) days' notice to answer and object, and so that the propounding party would have time to receive the subpoena and serve it.

On November 14, 2011, the hearing convened as scheduled. PECO appeared with counsel and one witness, PECO Senior Regulatory Assessor Renee Tarpley. Complainant appeared *pro se*.

Complainant argued that while his account was charged a commercial rate from the time he initiated service until February 22, 2010, he in fact requested a residential rate when he initiated service and therefore deserved a monetary credit for having paid more than what was owed to PECO. Tr. at 14-15. Complainant presented no document to demonstrate that PECO incorrectly designated the account as a commercial one rather than a residential account. *See* Initial Decision at 6.

PECO presented the testimony of Ms. Tarpley and introduced seven Exhibits into evidence. PECO's witness testified that the Complainant's property was coded as a commercial property prior to service being initiated in the Complainant's name, that PECO has no record of the Complainant requesting a residential service classification until February 2010, and that once the Complainant contacted PECO in February 2010 to request the change, his service was changed to the residential rate immediately.

On February 16, 2012, ALJ Pell issued an Initial Decision denying the Complaint. In the Initial Decision, ALJ Pell found, in relevant part, that Complainant initiated service at the service address in February 2003; the service address was designed as commercial property for billing purposes at that time; between February 2003 and February 2010, Complainant only looked at his PECO billing statements to determine the amount he owed; he never examined the bill to see what billing rate PECO was applying to his account; between February 2003 and February 2010

Complainant maintained current payments on his PECO bills; in February 2010, Complainant discovered PECO was billing him at a commercial rate instead of a residential rate; he subsequently informed PECO that the service address was a residential property and should be billed at a residential electric rate. Initial Decision at 2-3. At that time PECO changed Complainant's account from a commercial account to a residential electric account. This change became effective on February 22, 2010 and Complainant continues to be bill at the residential rate. Despite changing the account type, Complainant has not opened or paid a PECO bill since February 2010. As of November 14, 2011, Complainant's outstanding utility balance owed to PECO totaled \$ 1,525.44.

ALJ Pell therefore dismissed the Complaint because Complainant failed to show that PECO incorrectly billed him at any point in time.

On March 7, 2012, Complainant filed timely exceptions to the Initial Decision.

## **II. ARGUMENT**

In his Exceptions, Complainant alleges that: (1) ALJ Pell erred in finding that he opened a commercial, rather than a residential account, and that he should be issued a refund for any overcharges; and (2) PECO must now provide discovery consisting of all PECO bills sent to him from 2003 to the present as well as comparable Commission rates during the relevant period so that the Commission may determine the amount allegedly owed by PECO to Complainant. The Exceptions, however, provide no basis for reversing the decision of the ALJ, and therefore, PECO respectfully submits that the Commission should reject the Complainant's Exceptions and sustain the dismissal of the Complaint for the reasons set forth below.

**Reply Exception 1 – The Complainant Provided No Proof That He Requested a Residential Account in February 2003 or at any time prior to February 2010.**

The burden of proof is on the proponent of a rule or order, pursuant to Section 332(a) of the Public Utility Code, 66 Pa.C.S. § 332(a). In this proceeding, Complainant is the proponent of a rule or order, and therefore he bears the burden of proving by a preponderance of the evidence that PECO has violated the Public Utility Code or a regulation or order of the Commission. *Selling Hosiery v. Margulies*, 70 A.2d 854 (Pa. 1950). Complainant must also show that PECO is responsible for the problem described in the Complaint. *Feinstein v. Phila. Suburban Water Co.*, 50 Pa. P.U.C. 300 (1976). Once a complainant has established a *prima facie* case, the burden of going forward shifts to PECO, but the ultimate burden of persuasion remains with Complainant. If the utility presents evidence of co-equal or greater weight compared with the Complainant, the burden of proof will not have been met. *Milkie v. Pennsylvania Public Utility Comm'n*, 768 A.2d 1217 (Pa. Commw. Ct. 2001). In reviewing the Complaint, the Commission's role is to determine whether that burden has been sustained. *Burleson v. Pennsylvania. Public Utility Comm'n*, 443 A.2d 1373 (Pa. Commw. Ct. 1982), *aff'd* 461 A.2d 1234 (Pa. 1983).

In this case, the burden was on the Complainant to prove by that PECO acted improperly when it established his account as a commercial account. The ALJ correctly determined that the Complainant did not meet this burden. The gravamen of Complainant's first exception is that ALJ Pell erred in finding that he requested the commercial rate when he initiated service in February 2003. The Complainant is wrong. The record in this case reflects that Complainant provided no evidence whatsoever to support the allegation that he requested residential service from PECO when his account was initiated. The records also reflects that the Complainant did not contact PECO to request a residential classification until February 2010, nearly seven years after the account was established. The Complainant testified that between the time he initiated

service in February 2003 and February 2010, he only looked at his bills to determine the amount he owed. Tr. at 15. Complainant then testified that it was only in February 2010, he discovered that he was being billed at a commercial rate. Tr. at 15. ALJ correctly determined that the Complainant had not provided sufficient evidence to allow for a finding that the account should have been given a residential rate when it was established in 2003. As ALJ Pell stated in the Initial Decision:

It is undisputed that PECO billed the complainant at the commercial rate from the time he initiated service until February 22, 2010. Although the complainant testified that he requested the residential rate when he applied for electric service at the service address, he did not offer anything to demonstrate that he requested the residential rate instead of the commercial rate. To the contrary, PECO records reflect that the complainant requested the commercial rate when he initiated service. Clearly, the complainant did not meet his burden of proving that PECO improperly billed him at the commercial rate instead of the residential rate, that PECO incorrectly charged him in any way, or that PECO provided him with inadequate, inefficient, unsafe or unreasonable service in violation of Section 1501 of the Public Utility Code, 66 Pa. C.S.A. § 1501.

Initial Decision at 6.

The Complainant's Exceptions fail to demonstrate why ALJ Pell erred in finding that Complainant did not request the residential rate in February 2003. The Complainant's Exceptions make reference to the method in which he pays his bills online as support for his argument. However, the Complainant's method of paying bills has no support in the record, and even if it did, it is not probative on the issue of the service classification that was requested when the Complainant's account was initiated. While Complainant offered no evidence at the hearing to support his claim, PECO's records clearly reflect that the property in question has always been a commercial property and that the Complainant did not request a residential service rate for his nine-unit building. Tr. 35,41, and PECO Exhibit 2. Additionally, even though every monthly bill that the Complainant received between 2003 and February 2010 indicated that he

was billed at a commercial rate (Tr. 50-51), the record is clear that the Complainant never requested a residential rate until February 2010 (Tr. 33). The record also reflects that PECO changed the Complainant's account to a residential rate immediately upon receiving the Complainant's request in February of 2010. *See* Tr.34, 42 and PECO Exhibits 1 and 2. When the record is reviewed, it is clear that the Complainant has not met his burden of proving that PECO acted in properly in billing him the commercial rate for his property between 2003 and 2010. The Complainant provided no evidence at the hearing to allow for a conclusion that PECO acted improperly in connection with his account, and his Exceptions similarly provide no basis for overturning the Initial Decision's holdings.

**Reply Exception 2 – PECO Has No Obligation to Provide the Information Requested by the Complainant.**

Complainant's assertion that PECO must now produce bills and comparable residential rates for the relevant time period is wholly without merit. First, it is well-established that a party may not present additional matter after the conclusion of a hearing except upon motion and good cause shown. 52 Pa. Code § 5.431 Section 5.431 provides:

- (a) The record will be closed at the conclusion of the hearing unless otherwise directed by the presiding officer or the Commission.
- (b) After the record is closed, additional matter may not be relied upon or accepted into the record unless allowed for good cause shown by the presiding officer or the Commission upon motion.

*Id.* Complainant's request for discovery in the form of documents from PECO is untimely and must fail because he does not provide grounds to show that good cause exists for the late-requested discovery.

Complainant does not dispute the fact that he had a full opportunity to subpoena the very documents he now claims PECO must disclose. The Prehearing Order clearly states that the

parties should review the procedures established in 52 Pa. Code § 5.421. Section 5.421 provides detailed procedures pursuant to which parties to Commission proceedings may subpoena witnesses or documentary evidence.

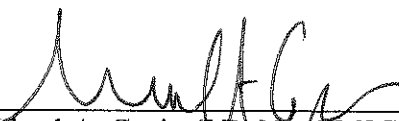
Finally, Complainant was informed of the consequences of failing to present evidence in the Prehearing Order. The Prehearing Order emphasizes that **“THE COMPLAINT WILL BE DISMISSED IF THE CUSTOMER FAILS TO PARTICIPATE IN THE HEARING AND PRESENT EVIDENCE IN SUPPORT OF THE COMPLAINT.”** Prehearing Order, September 7, 2011 (emphasis in original). Complainant was thus informed of the process by which to subpoena documentary evidence in PECO’s possession *and* warned of the consequences of failing to present evidence at the hearing. Therefore, Complainant was afforded due process. *Schneider v. Pennsylvania Public Utility Comm’n*, 479 A.2d 10 (Pa. Commw. Ct. 1984) (holding that due process is met when parties have notice and opportunity to be heard).

### **III. CONCLUSION**

Complainant provided no proof at the Initial Hearing to support his claim that he requested a residential rate in February 2003 when he initiated service. Because Complainant bears the burden of proof, ALJ Pell properly dismissed the Complaint when Complainant failed to produce any evidence, whatsoever, that PECO violated any law or rule in charging Complainant the commercial rate. Nothing in Complainant’s Exceptions warrants a reversal of the ALJ’s Initial Decision in this case as the substantial evidence on the record shows that ALJ Pell correctly rejected Complainant’s claims. The record further shows that Complainant was afforded due process and simply failed to present evidence at the hearing, which he could have

done, and which he was so advised by the Prehearing Order. As a result, the Commission should affirm the Initial Decision in its entirety and dismiss the Complaint with prejudice.

Respectfully submitted,



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Counsel for PECO Energy Company

Dated: March 28, 2012

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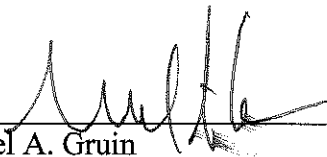
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**CERTIFICATE OF SERVICE**

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 First Class U.S. Mail

Enoch Jerome  
1423 West Erie Avenue  
First Floor Front  
Philadelphia, PA 19140

  
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Michael A. Guin

DATED: March 28, 2012