

STEVENS & LEE
LAWYERS & CONSULTANTS

17 North Second Street
16th Floor
Harrisburg, PA 17101
(717) 234-1090 Fax (717) 234-1099
www.stevenslee.com

Direct Dial: (717) 255-7365
Email: mag@stevenslee.com
Direct Fax: (610) 988-0852

March 28, 2012

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

RE: Barbara Jackson v. PECO Energy Company
Docket No. C-2010-2195248

Dear Secretary Chiavetta:

Enclosed for filing on behalf of PECO is an original of its 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. Gruin

Encl.

cc: Barbara Jackson w/encl. (via U.S. Mail)
The Office of Special Assistants w/encl. (Hardcopy and CD, via FedEx Overnight Delivery)

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

A PROFESSIONAL CORPORATION

SL1 1146166v1 101815.00070

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

BARBARA JACKSON

Complainant

v.

PECO ENERGY COMPANY

Respondent

:
:
:
:
:
:
:
:
:
:

Docket No. C-2010-2195248

**EXCEPTIONS OF
OF PECO ENERGY COMPANY**

Pursuant to 52 Pa Code § 5.533, PECO Energy Company (“PECO”) hereby files its Exceptions to the March 8, 2012 Initial Decision (“I.D.”) of the Administrative Law Judge (“ALJ”) in the above-referenced matter. PECO’s Exceptions are narrow in scope, and relate only to the I.D.’s conclusion that PECO did not provide reasonable and adequate service when it opened an account in Complainant Barbara Jackson’s name on November 12, 2009 and charged her for electric service under that account until February 2, 2010. As set forth in more detail below, this finding is not supported by the evidence in the record and has no basis in the Public Utility Code or the Public Utility Commission’s (“Commission”) regulations and rulings. Furthermore, upholding the I.D.’s conclusions on this point would create substantial uncertainty regarding a utility’s obligations to authenticate applicant-provided documentation prior to initiating utility service.

BACKGROUND AND PROCEDURAL HISTORY

On August 19, 2010, Barbara Jackson (“Complainant”) filed her formal complaint against PECO. The Complaint alleged that an individual went to PECO’s offices on November 12, 2009 with a photo identification and a lease “requesting to have [her] electric bill transferred

from 1862 Nolan Street to 1804 Nolan Street.” As relief, the Complaint sought a copy of the photo identification used by the individual on November 12, 2009, the signature of that individual, and a copy of any surveillance video of the incident to assist the Complainant in reporting the incident to the proper authorities.

PECO filed an Answer in response to the Complaint on September 13, 2010. PECO admitted that an individual came to PECO’s offices in November 2009 purporting to be Barbara Jackson, but clarified that this individual sought to initiate service in Ms. Jackson’s name at 1862 Nolan Street, not to transfer service from 1862 Nolan Street to 1804 Nolan Street. PECO’s Answer also confirmed that all charges associated with 1862 Nolan Street had been removed from her account balance

On March 9, 2011, an evidentiary hearing was held before Administrative Law Judge Cynthia Fordham. Although the hearing was conducted before ALJ Fordham, the Initial Decision in this case was written by Administrative Law Judge Katrina L. Dunderdale, who was assigned decision-writing responsibilities for the case by a Judge Change Notice issued on February 7, 2012. The hearing generated a transcript of ninety (90) pages. The Complainant introduced two (2) exhibits into the record (including one late-filed exhibit), and PECO introduced ten (10) exhibits into the record.

The I.D. in this matter was issued on March 28, 2012. The I.D. recommended sustaining the Complaint, in part. As ground for sustaining the Complaint, the I.D. concluded that “Complainant met the burden of proving Respondent violated the Commission’s regulations by failing to provide reasonable and adequate customer service when Respondent accepted fraudulent identification from an individual purporting to be Complainant, established a new service account in Complainant’s name without Complainant’s permission, and proceeded to

charge Complainant for electric service she neither requested nor enjoyed.”¹ PECO respectfully excepts to this conclusion, for the reasons set forth below.

EXCEPTION NO. 1

The Record Does Not Support a Finding that PECO Acted Unreasonably in Establishing an Account in the Complainant’s Name Under the Circumstances.

The dispute in this case revolves around whether PECO acted unreasonably in establishing service in Ms. Jackson’s name under the circumstances. As the I.D. correctly states, the Complainant bears the burden of proving that PECO violated the Commission’s regulations. The question is whether the Complainant has met her burden of proving that PECO acted unreasonably in establishing service in the Complainant’s name based on the documentation received by PECO on November 12, 2009.

The Complainant has not met this burden. From reading the I.D. it is unclear exactly what evidence was relied upon in reaching the conclusion that PECO acted unreasonably when it initiated service in Ms. Jackson’s name. The I.D. references Ms. Jackson’s late-filed exhibit, which purports to be a time log from her Post Office job for November 12, 2009. But even if this document is accepted as a correct record of the Complainant’s clock-in and clock out times, this document alone is not relevant for determining the reasonableness of PECO’s actions. This document demonstrates nothing other than the fact that Ms. Jackson was clocked in at work during the afternoon of November 12, 2009, not that PECO acted unreasonably with respect to the documentation presented at its offices. Even though the individual who entered PECO’s offices on November 12, 2009 was apparently not Ms. Jackson herself, the un rebutted evidence in the record indicates that another individual bearing Ms. Jackson’s identification and a lease did enter PECO’s offices. See the testimony of PECO witness Donna Elliot (Tr. 34-40) and

¹ I.D., at p. 11

PECO Exhibit 1.

While in hindsight it appears that the documentation used by this individual may have been falsified, it does not mean that it was unreasonable for PECO to accept these documents as valid forms of documentation necessary to initiate service. The fact that Ms. Jackson already had an active PECO account is not dispositive on the issue in the least. Many utility customers have concurrent service (i.e., service in their names at more than one address) for a variety of legitimate reasons. In order to reach the conclusion that PECO acted unreasonably in accepting the documentation and initiating service in the present case, it is necessary to analyze the documents that were produced. It must be determined whether it was reasonable for the PECO employee to accept the documents as valid proof of identity. This will depend on the types of document that were presented, the individual who presented documents, and the characteristics of the documents themselves. The I.D. provided no such analysis of the documents relied upon by PECO, or any specific basis for why it was unreasonable for PECO to rely upon such documents. There is no indication in the record that the documents were blatantly fraudulent, or that it should have been obvious to PECO that Ms. Jackson was not the person requesting service in her name. In the absence of such findings, it is impossible to conclude that the Complainant met her burden of proof of proving that PECO acted unreasonably.

Certainly, PECO and all other utilities have a strong incentive to ensure that service is initiated in the name of the actual person who applies to receive service. Initiating service based on identity theft inevitably leads to unpaid charges for electric service, eventual terminations and write-offs, and negative consequences for innocent ratepayers. But while PECO and every other utility attempts to verify the authenticity of documents presented to initiate service, there are limits to a utility's ability to conduct such authentication in the short

period of time between application and initiation of service. In this case, it appears that a fraud was perpetrated upon PECO and Ms. Jackson. Thankfully, however, the impact of the fraud was minimized, and the record in this case reflects that by March, 2010, the balance that had accrued in Ms. Jackson's name for service to 1862 Nolan Street was removed from her account, with no impact on her credit rating or finances. *See I.D.*, at p. 10.

In short, the record in this case does not support a finding of unreasonable action by PECO. While PECO did initiate service in Ms. Jackson's name, there is no evidence in the record to suggest that PECO did this intentionally, or even negligently. To the contrary, it is plainly evident that service was initiated in Ms. Jackson's name solely on the basis of the intentional fraud of a third party.

EXCEPTION NO. 2

No Finding of Unreasonable Service is Warranted Because PECO Acted in Accordance with the Public Utility Code and the Commission's Regulations

The Initial Decision correctly notes that the Commission does not require utility companies to maintain copies of the personal identification that service applications present at the time of their application.² But the I.D. then goes on find that PECO acted unreasonably in establishing service in Ms. Jackson's name due to the intentional fraudulent act of a third party. This finding has no grounding in the Public Utility Code, the Commission's regulations, or any other authority. The I.D. does not articulate any specific deficiencies in PECO's handling of the fraudulent third party-supplied documentation by reference to the Public Utility Code or the Commission's regulations, except references to the general provisions of Section 1501 of the Public Utility Code.

If PECO is found to have acted unreasonably under these circumstances, the Commission

would essentially be creating a form of strict liability for utilities in identify theft cases, i.e, if an identity theft fraud is perpetrated on a utility, then that utility is guilty of unreasonable service. If the Commission is going to impose such liability on utilities, at a minimum the Commission must promulgate some standard protocols for authenticating documents submitted by service applicants. No such guidance exists in the Public Utility Code or the Commission's regulations today. If the Commission does endorse the "strict liability" approach recommended by the I.D. in this case, the lack of any such guidance will cause extreme uncertainty among utilities, and the utility companies will likely need to undertake much stricter scrutiny of every service applicant. This will result in significant delays to service initiation, and likely could result in increased service denials for lack of identification. PECO respectfully submits that such a result is not warranted.

The Commission previously conducted an investigation into the impacts of identity theft, and the Commission Staff prepared a thorough report on the issue.³ The Staff Report in the Commission's Identity Theft proceeding makes the point that utilities and their law-abiding ratepayers are also victims in cases when an individual uses another person's identity to initiate service. The Staff Report stated:

"It is often forgotten that person-to-person identity theft involves another victim other than the person whose identity is stolen. The other "victim" of identity theft that is often overlooked is the utility to which the stolen identity is presented. This victim may be forgotten due to the fact that the media does not seem very interested in a utility company's being duped into serving the wrong customer for a short period of time."⁴

The Staff Report went on to explain the practices of utilities in connection with applications for service:

² I.D., at p. 10

³ See *In re: Identity Theft*, Docket Number - M-00041811, Order entered September 21, 2005

⁴ *Id.*, at Staff Report, pp. 12-13

“Virtually all the utilities state that an applicant's refusal to provide a social security number does not prevent an applicant from receiving service. However, where a social security number is not provided, or where one is provided and fails to verify the person’s identity, **most utilities require the applicant to personally appear before a company employee and present at least two forms of identification.**”⁵ (emphasis added).

In this case, PECO required the same verifications that most other utilities require – personal appearance at company offices with two forms of identification.

After reviewing the Staff’s Report, the Commission ultimately decided to take no action at the time to impose specific identity-theft prevention requirements on utilities. Instead, the Commission directed the Staff is continue to monitor, on an on-going basis, identity theft- related legislation and to make recommendations, as appropriate, regarding any future Commission action that may be warranted.⁶ To date, no such action has been taken by the Commission. The I.D. in the present case would impose new identity theft prevention obligations on utilities that the Commission has to date declined to impose. Because the I.D. seeks to hold PECO to a standard for identity theft prevention that has not been required by the Commission, the I.D.’s findings of unreasonable service by PECO are improper and should be rejected by the Commission.

CONCLUSION

There is no evidence in the record to support a conclusion that PECO acted improperly in this case. In short, the I.D.’s finding of unreasonable service has no valid basis in fact or law, and it should be rejected by the Commission. PECO respectfully submits that the Commission should dismiss the Complaint in its entirety with no finding of unreasonable service against PECO.

⁵ *Id.*, at Staff Report, p. 15

⁶ *Id.*, at p. 5

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Michael Gruin", is written over a horizontal line.

Michael Gruin (I.D. No. 78625)
Stevens & Lee
17 North 2nd Street, 16th Floor
Harrisburg, PA 17101
Telephone: 717-234-1090
Facsimile: 717-234-1099
mag@stevenslee.com

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

Dated: March 28, 2012

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

BARBARA JACKSON
Complainant

v.

PECO ENERGY COMPANY
Respondent

:
:
:
:
:
:

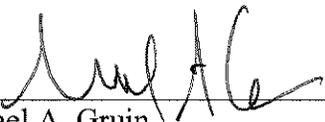
Docket No. C-2010-2195248

CERTIFICATE OF SERVICE

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

Barbara Jackson
1804 Nolan Street
Philadelphia, PA 19138



Michael A. Gruin

DATED: March 28, 2012