

KERRY KRISTOFFER NEAL, ESQ.

Attorney at Law

Admitted in Maryland and the District of Columbia

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March 27, 2012

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

Re: **Kerry Neal v. PECO Energy Company**
Docket No. C-2012-2284618

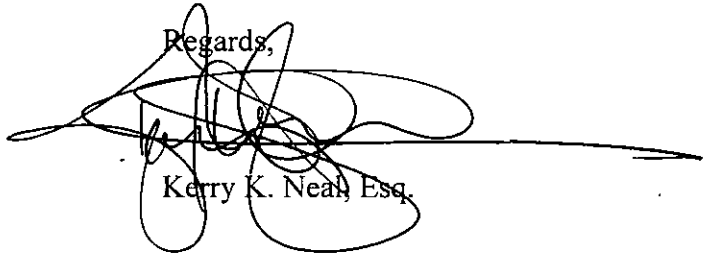
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SECRETARY'S BUREAU

Dear Secretary Chiavetta:

Enclosed for filing on behalf of Plaintiff is Plaintiff's Response (IN CLARIFICATION) to Defendant's Motion of Objection to Withdraw Without Prejudice. Additionally, on page three please see that Plaintiff JOINS Defendant's Objection to Tenant's Petition to Intervene. A copy of this has been served on the Defendant (through Defendant's Counsel) and to the Tenant/Petitioner (through independent Counsel) – attached are copies of applicable Certificates of Service.

Please don't hesitate to contact me should you have further questions.

Regards,



Kerry K. Neal, Esq.

Encl.

Cc: The Honorable Dennis J. Buckley (via email and USPS first class mail)
Dana Pirone Carosella, Esq., (via email and USPS first class mail)
Christina Matthewson, Esq. (via first class mail)

COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA PUBLIC UTILITY COMMISSION
OFFICE OF ADMINISTRATIVE LAW
HARRISBURG, PA 17105-3265

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KERRY K. NEAL,)	
)	
Plaintiff,)	
)	Case No. C-2012-2284618
PECO Energy Company,)	
)	
Defendant)	Next Event: 04/17/2012 @ 10:00am
)	Telephonic Hearing

**RESPONSE (IN CLARIFICATION) TO DEFENDANT'S MOTION OF
OBJECTION TO PLAINTIFF'S MOTION TO WITHDRAW WITHOUT
PREJUDICE.**

COMES NOW, Kerry K. Neal, Esq., Plaintiff in the above-entitled action and respectfully states to this court as follows:

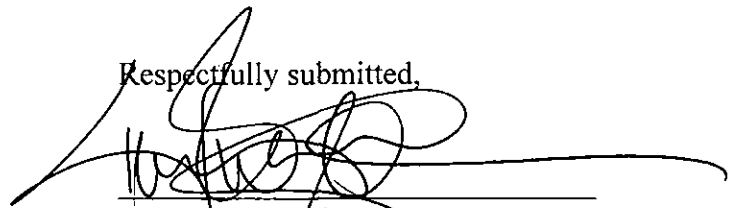
1. This Honorable Court should not be persuaded by Defendant's characterization of events in Defendants Objection to Plaintiff's Consolidated Motion. Before the court is a clear question for determination: 1) whether Defendant PECO afforded timely, accurate, adequate and required 'notice' *prior to* transfer of utilities from the name of the tenant to landlord under the proviso of the applicable statute. It is Plaintiff's position that PECO did not. As PECO has proffered in its own answer and preliminary exhibits (thereby inferring knowledge – their document) that notice went to the wrong address, was the subject of, and discussed the wrong property, related to the wrong land parcel and wrong apartment, and was ultimately untimely both in receipt and in record. Further, this case illustrates PECO's history of poor business

practices including: 1. encouragement of a written appeal to PECO when the statute provided for no such appeal; 2, failure to provide documentation to substantiate PECO's position after numerous requests on diverse occasions; and 3, failure to provide inspection reports (except as through counsel by way of exhibits. The totality of events by PECO added to an overall frustration of process and was tantamount to a waste of significant time and resources when the issue would have been more quickly resolved by other means including providing written notice of the discovery of 'foreign load' and the statutory underpinnings for PECO's actions. PECO's actions were, at best, negligent and were the proximate cause of bringing the instant action for resolution before the Public Utility Commission. The Public Utility Commission has the authority to resolve the issue a number of ways, including ordering that PECO zero out the bill *without* reverting the prior past-due balance to the tenant and Plaintiff would owe nothing. This result would eliminate any claim by tenant that tenant be joined as an indispensable party. This result is also acceptable to Plaintiff. Additionally, the Commission can find that PECO's actions warrant the fixing of a fine and/or penalty against PECO and require PECO to enhance their business practices so to comport with the timely notice standard under the statute and to avail affected parties the opportunity of due process to cure such defects in a timely manner and upon notice.

2. Second, there is no potential of unfair advantage, unjust enrichment or 'double dipping' as is PECO's assertion. It is not my intention to seek the same relief from this Commission *in addition to* seeking analog relief arising from the same facts at the Court of Common Pleas or other competent forum. The latter is a money judgment while the former is a matter of injunctive relief for violations of due process. In either event, the parties are not the same and for this reason Plaintiff should not be foreclosed from pursuing future claims in accordance with the law on these facts. Plaintiff should be afforded each and every opportunity to exhaust all administrative remedies in the resolution of this case in the manner in which Plaintiff sees fit.

3. Lastly, Plaintiff joins Defendant in objecting to Tenant's Petition to Intervene. Tenant has no standing in a case where the PUC is unable to issue a money judgment or otherwise affect Tenants' rights and therefore should not be joined as an indispensable party.

Respectfully submitted,



Kerry K. Neal, Esq.
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Washington, DC 20001-1825
703-585-3210

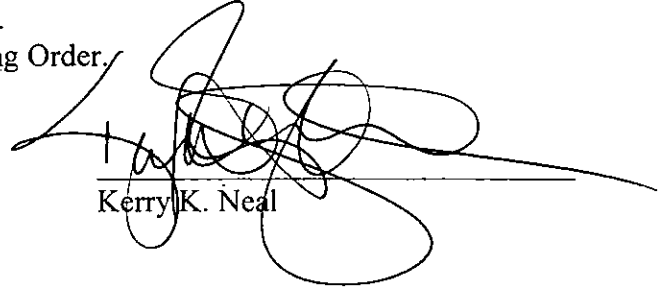
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MEMORANDUM OF POINTS AND AUTHORITIES

1. The cases cited herein.
2. The Court's Scheduling Order.
3. The record herein.



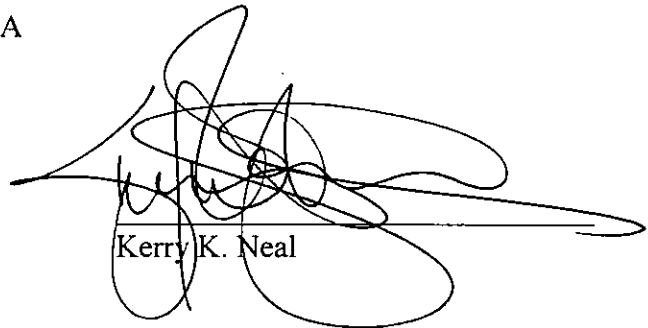
Kerry K. Neal

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of this RESPONSE/Motion was mailed by regular first class mail postage prepaid this 27th day of March, 2011 to Dana Pirone Carosella, Esq., (Counsel for Defendant PECO) AND TO Christina Matthewson, Esq. (Counsel for Petitioner) at the following:

Dana Pirone Carosella, Esq.
Law Offices of Stevens & Lee
620 Freedom Business Center, Suite 200
King of Prussia, PA 19406

Christina Matthewson, Esq.
Legal Aid of Southeastern PA
410 Welsh Street
Chester, PA 19013



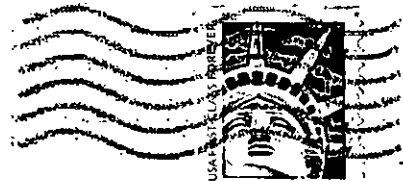
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Kerry K. Neal, Esq.
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Washington, DC 20001-1825

~~SOUTHERN MAIL~~

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

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