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May 22, 2012

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

RE: Mitchell Pfeffer v. PECO Energy Company
Docket No. C-2008-2074802

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. Grum

Encl.

cc: Mitchell Pfeffer, w/encl. (via U.S. Mail)
The Office of Special Assistants w/encl. (Hardcopy and CD, via U.S. Mail)

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**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

MITCHELL PFEFFER	:	
Complainant	:	
v.	:	Docket No. C-2008-2074802
	:	
PECO ENERGY COMPANY	:	
Respondent	:	

**EXCEPTIONS OF
OF PECO ENERGY COMPANY**

Pursuant to 52 Pa Code § 5.533, PECO Energy Company (“PECO”) hereby files its Exceptions to the Initial Decision (“I.D.”) of the Administrative Law Judge (“ALJ”) in the above-referenced matter. As set forth in more detail below, the I.D. erroneously concluded that there were incorrect charges on the Complainant’s bill, and improperly ordered the Complainant’s account balance reduced by over \$14,000. This finding by the I.D. is not supported by substantial evidence and is instead based on an incorrect reading of the Complainant’s account history for several months in 2006. Furthermore, the I.D. ignores clear and independent documentation which confirms that the account balance is correct, and overlooks that fact that the account balances had never before been disputed by the Complainant during the course of previous informal complaint payment arrangement proceedings.

The ALJ in this case was placed in a difficult position of writing an Initial Decision nearly three years after the evidentiary hearing was held, and without having presided over the evidentiary hearing. In addition, the customer’s account records were complicated by the fact that the Complainant accrued a particularly large unpaid balance

on his account and broke numerous payment arrangements. Furthermore, the Complainant did not challenge the charges or balance on his account until many years had passed, by which time PECO's had converted to a different billing system and the Complainant had moved to a different address. All of these factors contributed to a critical misunderstanding of the PECO account activity statements and account history. But a proper review of the evidence in this case shows that all of the charges on the Complainant's account are correct and there is no legitimate basis for removing over \$14,000 in valid charges from the Complainant's account.

BACKGROUND AND PROCEDURAL HISTORY

The case involves disputed unpaid charges from Complainant's prior address that were subsequently transferred to his current address. The Complainant previously had service at 1127 Sandringham Road, Bala Cynwyd, PA for over twenty years, from July, 1986 to July, 2007.¹ During the time he resided at Sandringham Road, the Complainant requested and received multiple payment arrangements to address unpaid balances on his PECO account.

On January 31, 2000, the Bureau of Consumer Services ("BCS") granted the Complainant a payment arrangement to address his then-unpaid balance of \$3,009.² The Complainant did not dispute the balance on his account at this time.

On November 10, 2000, the BCS granted the Complainant a payment arrangement to address his then-unpaid balance of \$4,563.36.³ The Complainant did not dispute the balance on his account at this time.

¹ PECO Answer, at paragraph 4. See also, Tr. p. 38.

² PECO Ex. 2, Tr. p. 51

³ PECO Ex. 2, Tr. p. 51

On November 14, 2005, PECO granted the Complainant a payment arrangement to address his then-unpaid balance of \$15,728.69.⁴ This agreement called for the Complainant to pay monthly installments of \$2,621.45 in order to address his arrearage. The Complainant did not dispute the balance on his account at this time, and he voluntarily entered into this payment agreement.

On October 5, 2006, PECO granted the Complainant a payment arrangement to address his then-unpaid balance of \$20,684.⁵ The Complainant did not dispute the balance on his account at this time, and he voluntarily entered into this payment agreement.

At the time the Complainant moved from the Sandringham Road address, there was an unpaid balance on his PECO account of \$23,359.64.⁶ The Complainant initiated service at his new address, 1710 Oakwood Terrace, Narberth, PA, in September of 2007.⁷ At that time, PECO transferred the unpaid balance from the Sandringham Road address (\$23,359.64) to the Complainant's 1710 Oakwood Terrace address.⁸

In October of 2007, the Complainant requested another payment arrangement on an unpaid balance of \$23, 529. The Complainant did not dispute the balance on his account at that time. The Complainant was provided with another payment arrangement to address this unpaid balance.⁹

The Complainant defaulted on his payment arrangement, and after proper notice, his electric service was terminated on October 13, 2008.¹⁰ On that day, *for the very first*

⁴ Id.

⁵ Id.

⁶ PECO Ex. 5., Tr. 51

⁷ PECO Answer, at paragraph 4.

⁸ PECO Ex. 6

⁹ PECO Ex. 2, and Tr. 52

¹⁰ PECO Answer, at paragraph 4.

time, the Complainant questioned his account balance.¹¹ The Complainant admitted on the record that between 1986 and 2008, he never contacted PECO to question incorrect charges on his account.¹²

The Complainant filed his Formal Complaint in this matter on November 6, 2008. The Complaint averred that there were incorrect charges on the Complainant's bill, and that he would like to be given a payment arrangement whereby he would pay \$250 per month.

PECO filed its Answer to the Complaint on December 8, 2008. PECO denied that there were incorrect charges on the Complainant's account, and recounted the Complainant's service and payment arrangement history. PECO's Answer explains the balance that was transferred from the Complainant's former account to his current account.

An evidentiary hearing was held in this matter on April 22, 2009 before Administrative Law Judge Fordham. Both parties presented the testimony of one witness and introduced exhibits into the record at the hearing. Additionally, both parties submitted late-filed exhibits into the record.

Although the hearing was conducted before ALJ Fordham, the Initial Decision in this case was written by Administrative Law Judge Darlene D. Heep, who was assigned decision-writing responsibilities for the case by a Judge Change Notice issued on February 13, 2012.

The I.D. in this matter was issued on May 2, 2012. The I.D. recommended sustaining the Complaint, in part, and recommended a finding that there were incorrect

¹¹ Id.

¹² Tr. p. 39

charges on the Complainant's bills. Relying almost entirely on a partial account statement provided by the Complainant with two pages missing (Complainant's Exhibit 1), the ALJ determined that the Complainant had established a prima facie case that there were discrepancies in PECO's account balance calculations, and that PECO failed to rebut these allegations. Based on this conclusion, the ALJ ordered that the Complainant's account balance should be reduced by \$14,328.64, leaving a remaining balance \$8,338. The I.D. then orders a payment arrangement on this balance based on income information provided by the Complainant at the time of the hearing in 2009. PECO respectfully excepts to the I.D.'s conclusion that there were incorrect charges on the Complainant's bill and that the Complainant's account balance should be reduced. PECO also requests that the record be re-opened to allow the Complaint to provide current income information in order to establish a current payment arrangement.

EXCEPTION NO. 1

The Evidence Does Not Support A Finding That There Were Incorrect Charges On The Complainant's Account

The Complainant has the burden of showing that the utility is responsible or accountable for the problem described in the Complaint in order to prevail. *Patterson v. Bell Telephone Company of Pennsylvania*, 72 Pa. PUC 196 (1990); *Feinstein v. Philadelphia Suburban Water Company*, 50 Pa. PUC 300 (1976). This must be shown by a preponderance of the evidence. *Samuel J. Lansberry, Inc. v. PA Public Utility Comm'n*, 578 A.2d 600 (Pa. Cmwlth.1990), *alloc. den.*, 529 A.2d 654, 602 A.2d 863 (1992).

Contrary to the Initial Decision's findings, the Complainant did not satisfy the burden of proving that there were billing errors on his account. The foundation for the I.D.'s conclusion that a billing error occurred is one page from one record: an account activity statement for the period from December 2005 to June 2006 (Complainant's Exhibit 1 and PECO Exhibit 5). The I.D.'s conclusion is wrong, because the information on this billing record was incorrectly interpreted. PECO takes exception to the I.D.'s findings that the entries on the account activity statement prove that a billing error occurred, and further excepts to the \$14,328.64 adjustment ordered by the I.D.

At the hearing in this case in 2009, the Complainant did not dispute the amount of the current or recent charges on his bill. Instead, he attempted challenge the long-established balance on his account by focusing in on one page of one account statement covering the period from December 2005 to June 2006. The PECO account activity statement for this period, as reflected on both Complainant Exhibit 1 and PECO Exhibit 5, is admittedly confusing. The statement for this period shows the Complainant's balance gradually rising from \$6239.34 to \$19,583.99 over a period of five months. If viewed in a vacuum, this statement could raise concerns about improper billing. But, there are multiple pieces of evidence which demonstrate that the Complainant had a balance of over \$16,000 at the end of 2005.

As PECO witness Tarpley explained, PECO underwent a billing system conversion in 2006.¹³ The billing system conversion is reflected in PECO Exhibit 5, which shows the Complainant's account history in two markedly different formats. The first four pages of Exhibit 5 show the Complainant's account history from March 2003 through December 2005. These pages reflect all of the Complainant's monthly charges

¹³ Tr., 50

and payments, and it is clear the Complainant made almost no payments on his account between 2003 and 2005. As a result, this document reflects that fact that the Complainant's balance as of 12/5/05 was \$16,504.29. See PECO Exhibit 5, at p. 4.

The next five pages of PECO Exhibit 5 reflect the billing system conversion, because these pages show the Complainant's account history in an entirely different format. These pages of the account statement begin on 12/6/05, and reflect a starting balance forward of zero. As PECO witness Tarpley explained, the starting balance is shown as zero because the Complainant had been given a payment arrangement in November 2005, and when a customer is given a payment arrangement, the full balance due is not reflected on the account statement.¹⁴ The payment agreement in question called for the Complainant to pay \$2,621.45 per month.¹⁵ **Therefore, the gradual increases in the balance from December 2005 to June 2006 reflect the Complainant's non-payment of his payment arrangement, *not* a billing mistake.** As each month passed, and no payment was received, the balance grew by \$2,621.45 plus each month's current monthly charges. So, contrary to the I.D.s findings, there is no discrepancy on the account activity statement. The chart on page 10 of the I.D. is mistaken because it does not take into account the required \$2,621.45 payment arrangement amount that was due on a monthly basis. The I.D.'s finding that there was an "over-calculation" of the Complainant's account balance is incorrect and should be rejected.

Admittedly, if one was to look at this statement without the benefit of a witness's explanation, it may be difficult to understand how the balance grew. But this

¹⁴ Tr., p. 50

¹⁵ PECO Ex. 2.

one page of the account statement does not provide a basis to conclude that the Complainant was incorrectly billed. There are multiple other independent documents which prove that the Complainant's balance was correct in 2006, correct in 2008 at the time the Complaint was filed, and correct in 2009 at the time of the hearing.

As stated above, the first four pages of PECO Exhibit 5 show how the Complainant's balance grew due to non-payment. Furthermore, the record reflects that the Complainant sought and received payment agreements for his ever-increasing unpaid balances: On January 31, 2000, the Bureau of Consumer Services ("BCS") granted the Complainant a payment arrangement to address his then-unpaid balance of \$3,009.¹⁶

On November 10, 2000, the BCS granted the Complainant a payment arrangement to address his then-unpaid balance of \$4,563.36.¹⁷

On November 14, 2005, PECO granted the Complainant a payment arrangement to address his then-unpaid balance of \$15,728.69.¹⁸ This number is very much in line with the unpaid balance reflected in PECO Exhibit 5, at page 4. And, as the Complainant admitted, he did not dispute his balance at that time. The payment arrangement issued in November of 2005 provides independent corroboration of the Complainant's unpaid balance at that time. The lack of any dispute by the Complainant further bolsters the conclusion that the unpaid balance on the account was accurate. It is important to remember that the Complainant **agreed** to this payment arrangement on the 15,728.69 balance. This lack of disagreement by the Complainant is further proof that the account balance was correct as of the end of 2005.

¹⁶ PECO Ex. 2, Tr. p. 51

¹⁷ PECO Ex. 2, Tr. p. 51

¹⁸ Id.

Again, the system conversion in 2006 resulted in an account activity statement in which the total account balance was not reflected on the Complainant's true balance for several months. Instead, only the growing unpaid balance on the November 2005 payment arrangement was reflected. This technical anomaly should not allow a customer to shirk his responsibility for \$14,000 in unpaid bills. Subsequent information in the record corroborates the fact that the unpaid balance on the account on the account activity statement is in fact correct, even though the entries for the 12/05 through 6/06 period do not show the actual full unpaid balance.

On October 5, 2006, PECO granted the Complainant a payment arrangement to address his then-unpaid balance of \$20,684.¹⁹ This amount is nearly identical to the outstanding balance that is reflected on the account activity statement, PECO Exhibit 5, for that period. Again, when requesting a payment arrangement on his balance, the Complainant **did not dispute the balance on his account at this time**. And again his lack of a dispute completely undermines the Complainant's newly minted contention that his balance in 2006 was incorrect. The Complainant admitted on the record that between 1986 and 2008, he never contacted PECO to question incorrect charges on his account.²⁰

When all of the evidence in the record is considered, and not just one page of one activity statement, it is clear that there was no mis-billing of the Complainant's account. The Complainant did not provide any examples of bills where charges were incorrect. Instead, the Complainant in this case disingenuously attempted to question long-ago account balances which pre-dated a PECO system conversion, pre-dated a change in service address, and pre-dated subsequent payment arrangements *that he agreed to*. The

¹⁹ Id.

²⁰ Tr. p. 39

Commission should see through this ruse, and recognize the information on the account statement for what it is—a growing balance resulting from the Complainant’s failure to make *any* payments on his payment arrangement. Even if this explanation is not accepted, there is other independent evidence to corroborate that the balance on the account is correct.

It also must be recognized that if this Initial Decision is upheld, it would establish a dangerous precedent and potential result in chaos. Suddenly, customers with large balances would flood the Company and the Commission with complaints seeking to have agreed-upon balances lowered, based on alleged technical discrepancies in long-ago billing history reports.

Such a result is not warranted in this case. As set forth above, there is ample evidence in the record to support PECO’s calculation of the current balance due on the Complainant’s account. While the account history may be confusing due to the entries in early 2006 when no payments were being made on the payment arrangement, a \$14,000 billing mistake has not been proven. The Complainant did not demonstrate by the preponderance of the evidence that he was entitled to the relief granted by the I.D., (i.e., an adjustment to the account balance) and therefore the I.D. should be vacated on this point.

EXCEPTION NO. 2

The Record in This Matter Needs To Be Re-Opened to Obtain Updated Income And Occupancy Information for the Complainant

The I.D. orders a 60-month payment agreement for the unpaid balance on the Complainant’s account. I.D., at 13. This agreement length was established based on the Complainant’s contentions that his family income place him below 150% of the poverty

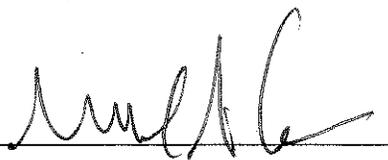
level.

The income and occupancy information which formed the basis for the payment arrangement determination was provided by the Complainant at the hearing in April 2009, over three years ago. It is very likely that his income has changed in that time period. It would be improper to order payment terms in 2012, based on income information submitted in 2009. For this reason, PECO respectfully requests that the record in this matter be re-opened and that the Complainant be required to provide updated income information, including but not limited to paystubs or other proof of wages. Upon receipt of this updated income information, it must then be determined if the Complainant is eligible for a new payment arrangement under Chapter 14, and if so, what the appropriate length that arrangement should be.

III. CONCLUSION

For the reasons set forth above, PECO respectfully requests that the Commission reject the I.D.'s recommendation to reduce the Complainant's account balance, and order the record to be re-opened for the purpose of receiving updated income information from the Complainant.

Respectfully submitted,



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Counsel for PECO Energy Company

Dated: May 22, 2012

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

MITCHELL PFEFFER
Complainant

v.

PECO ENERGY COMPANY
Respondent

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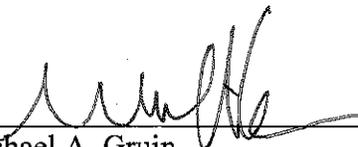
Docket No. C-2008-2074802

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

Mitchell Pfeffer
1710 Oakwood Terrace
Apt. 5F
Narberth, PA 19072



Michael A. Gruin

DATED: May 22, 2012