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May 29, 2012

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

**RE: Andrew Maholik v. PECO Energy Company**  
**Docket No. F-2011-2263263**

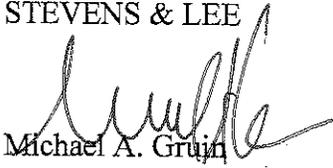
Dear Secretary Chiavetta:

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. Grun

Encl.

cc: Andrew Maholik, 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**

ANDREW MAHOLIK	:	
Complainant	:	
v.	:	Docket No. F-2011-2263263
	:	
PECO ENERGY COMPANY	:	
Respondent	:	

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**EXCEPTIONS OF  
OF PECO ENERGY COMPANY**

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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. The I.D.’s conclusion that PECO’s \$920 meter tampering fee was “unreasonable” is not supported by the evidence and directly conflicts with recent a Commission Order in a nearly identical matter wherein the \$920 fee was found to be just and reasonable.

**BACKGROUND AND PROCEDURAL HISTORY**

In this case, the Complainant is disputing a \$920 tampering fee that PECO assessed to his account. The Complaint alleged that the \$920 fee that was assessed was too high, and for relief, the Complainant asked that the Commission to reduce the fee.

PECO filed an Answer to the Complaint on October 10, 2011. PECO’s Answer explained that the tampering fee of \$920 is not too high, and that it is authorized by Rule 10.4 of PECO’s Tariff.

On March 7, 2012, a hearing was held on the complaint. At the hearing, the Complainant testified on his own behalf and introduced no exhibits into the record. PECO presented the testimony of one witness and introduced seven exhibits.

On May 8, 2012, the I.D. was issued in this matter. The I.D. held that the \$920 tampering fee “is not based on the utility’s cost of providing the service, that it is fixed discriminately at pleasure, and that it is unreasonable”. As a result, the I.D. ordered that the Complainant should not be required to pay the \$920 tampering fee.

**EXCEPTION NO. 1**

**The ALJ’s Conclusion is Erroneous Because It Is Based On Incorrect Factors For Determining the Tampering Fee and Because It Contradicts Clear Commission Precedent Which Holds That The \$920 Fee Is Reasonable**

In reaching the conclusion that the \$920 tampering fee is unreasonable, the ALJ examined the length of time that the unauthorized service occurred. The ALJ compared the \$920 fee assessed to the Complainant in this case with a \$350 fee assessed to a different complainant in the case of Jenkins v. PECO, Docket No. C-2011-2255312 (Initial Decision dated March, 2012). He concluded that the fee in the current case was unreasonable, because the fee was higher than the fee in the Jenkins case even though the period of unauthorized usage was shorter.

First, the ALJ erred because the length of time that unauthorized service occurs is not a factor in determining a meter tampering fee. Rather, the tampering fee is based on the costs of repairs, replacements, inspections, investigations, and protective installations. PECO’s Commission-approved tariff Rule 10.4 states that

**10.4 Tampering.** In the event of the Company’s meters or other property being tampered with, the customer being supplied through such equipment shall pay the amount

which the Company may estimate is due for service used but not registered on the Company's meter, and **for any repairs or replacements required, as well as for costs of inspections, investigations, and protective installations.**

See PECO Exhibit 2 and TR., pp. 15-16. Therefore, the ALJ committed reversible error when he used the length of time of unauthorized service as the basis for determining the reasonableness of the tampering fee.

Secondly, the ALJ erred by comparing the tampering fee in this case to the tampering fee in the Jenkins case. As the Tariff Rule 10.4 states, the fee is based on costs actually incurred to investigate and repair the tampering. These costs will vary depending on the extent of the tampering, the investigation, and the repairs required. In the Jenkins case, the repair involved a simple meter replacement. See Jenkins I.D., at p. 3. By contrast, the repairs involved in the present case involved cutting of electric service at the taps, installing locks on the meter, and resealing the meter. See, PECO Ex. 5 and Tr., p. 17. These repairs were markedly different than the repairs involved in the Jenkins case, and thus it was appropriate for the tampering fee to be different.

Furthermore, the ALJ's finding directly conflicts with a recent Commission Order which approved PECO's \$920 tampering fee as reasonable. In the case of Peter Ouellette v. PECO Energy Company, Docket No. F-2010-2151048 (Initial Decision issued May 13, 2012, Final Order entered August 23, 2010), ALJ Nguyen ruled that the \$920 meter tampering fee that PECO imposed on Peter Ouellette's account was "based on the costs of repair and investigation and is reasonable and lawful." Ouellette, I.D. at p. 7. The Commission upheld this decision in its entirety by Final Order Entered August 23, 2010, noting that it "is well established that a utility tariff (list of rates and

rules for service) that has been approved by the Commission has the force of law and is binding on both the utility and the utility's customers." Pennsylvania Electric Co. v. Pennsylvania Public Utility Commission, 437 A.2d 1067 (Pa. Cmwlth. 1981).

In the Ouellette case, both the ALJ and the Commission determined that the Complainant had not provided any affirmative evidence to support a conclusion that the \$920 tampering fee was unreasonable, noting that it is also well established that testimony consisting of guesses, conjecture or speculation – supposition without a premise of fact – are ordinarily rejected as inadmissible and as proving nothing. Cuthbert v. City of Philadelphia, 417 Pa. 610, 209 A.2d 261 (1965); B. & K. Inc. v. Commonwealth, Department of Highways, 398 Pa. 518, 159 A.2d 206 (1960).

Similarly, in this case, the Complainant did not present any evidence to support a finding that the \$920 tampering fee was unreasonable,

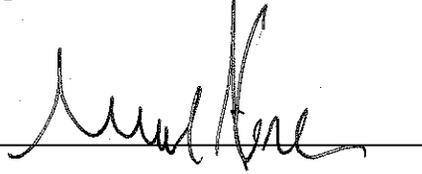
Complainant has the burden of showing that the utility is responsible or accountable for the problem described in the Complaint in order to prevail. Patterson v. Bell Telephone Company of Pennsylvania, 72 Pa. PUC 196 (1990); Feinstein v. Philadelphia Suburban Water Company, 50 Pa. PUC 300 (1976). This 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).

The Complainant did not satisfy the burden of proving that the \$920 tampering fee was unreasonable. The ALJ's finding is therefore unsupported by the evidence, is based on a flawed interpretation of PECO's tariff, and contradicts recent Commission precedent that is directly on point. As such, the I.D. should be reversed.

### III. CONCLUSION

For the reasons set forth above, PECO respectfully requests that the Commission reject the I.D.'s finding that the \$920 tampering fee is "is not based on the utility's cost of providing the service, that it is fixed discriminately at pleasure, and that it is unreasonable", and dismiss the Complaint in its entirety.

Respectfully submitted,

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

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Counsel for PECO Energy Company

Dated: May 29, 2012

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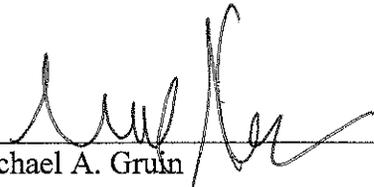
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**CERTIFICATE OF SERVICE**

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

Andrew Maholik  
244 Baltimore Pike  
Unit 205  
Glen Mills, PA 19342

  
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Michael A. Grun

DATED: May 29, 2012