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June 11, 2012

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

**RE: John R. Starzmann v. PECO Energy Company**  
**Docket No. C-2010-2192759**

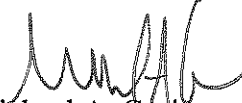
Dear Secretary Chiavetta:

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

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A PROFESSIONAL CORPORATION

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

John R. Starzmann	:	
	:	
Complainant	:	
	:	Docket No. C-2010-2192759
v.	:	
	:	
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.

On May 24, 2010, lightning struck and damaged the PECO electric system. As a consequence of that lighting strike, the Complainant in this case temporarily experienced low voltage at his residence. On June 11, 2010, PECO took a portion of its electric distribution system out of normal configuration in order to conduct maintenance on its system. During the out-of-configuration period, the Complainant again alleged that he experienced low voltage. In the Initial Decision, the ALJ found that these two events constituted violations of 52 Pa. Code §57.14, and recommended that civil penalties be imposed upon PECO.

PECO respectfully submits that this Initial Decision should not be adopted by the Commission. 52 Pa. Code §57.14, on its face, requires that voltage be kept within

certain limitations “during normal system operation”<sup>1</sup>, and states that variations in voltage “from causes beyond the control of the public utility will not be considered as violations of this section.”<sup>2</sup> A system that has purposefully been taken out of normal configuration and a lighting strike simply should not be deemed to be circumstances of “normal system operation.” If these events are considered to be “normal system operation,” then it is difficult to understand what situation would fall outside of “normal system operation.”

The difficulty with considering such events to be “normal system operation” is underscored by other factors in this case. Mr. Starzmann argued that PECO should be required to implement a number of remedial efforts, including installing protective switchgear and relays, automatic transferring, establishing maintenance procedures that preclude low voltage, and upgrading its distribution system. The ALJ specifically found (on p. 13 of the I.D.) that: “These actions are excessive and unnecessary.” The ALJ also found (on p. 20 of the I.D.) that: “It is not reasonable to require PECO to undertake the steps which Mr. Starzmann would like the Commission to order PECO to take.” The ALJ also found (on p. 18 of the I.D.) that: “It is certainly reasonable to expect that there will be some instances of low voltage at certain times at some points in the system. “

PECO agrees with all of these statements from the Initial Decision. But if all of these statements are true, then how can it also be true that civil penalties should be imposed against PECO in this case? And perhaps more importantly, what steps can

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<sup>1</sup> “For service rendered primarily for power purposes, the allowable variation in voltage measured at the service terminals of the customer may not exceed, for a longer period than 1 minute in each instance, 10% above or below the standard nominal service voltage during normal system operation” 52 Pa. Code § 57.14 (c).

<sup>2</sup> “Variations of voltage in excess of those specified, caused by the operations of the facilities of the customer in violation of his contract or the filed tariff rules of the public utility, or from causes beyond the control of the public utility, will not be considered as violations of this section.” 52 Pa. Code § 57.14 (d)(2).

PECO take to comply with ordering paragraph 3, which orders: “That PECO Energy Company shall cease and desist from further violations of the Public Utility Commission’s regulations.” According to the Initial Decision, it is not reasonable to expect PECO to implement the engineering fixes suggested by the Complainant, and it is reasonable to expect there will be some instances of low voltage. But the Initial Decision also orders PECO to cease and desist from such situations. These findings directly contradict one another, and result in an Order that is impossible to comply with.

By far, the better approach to these facts is to give meaning to the clause in 52 Pa. Code §57.14 that requires voltage be kept within certain parameters only during “normal system operation,” and that a lighting strike and an out-of-configuration system are clearly not “normal system operation.” If the Commission adopts that approach, then it will avoid the otherwise non-implementable outcome of this case – that is, ordering a utility to cease and desist from a behavior, while simultaneously ruling that the behavior itself is reasonable, and that it would be unreasonable to expect the utility to mitigate the behavior.

## **BACKGROUND AND PROCEDURAL HISTORY**

On or about August 11, 2010, the Complainant filed a Formal Complaint (“Complaint”) against PECO. The Complaint alleged that the Complainant had been experiencing low voltage at his residence on occasion for over 25 years and requested that various remedial measures be ordered against PECO.

On September 1, 2010, PECO filed its Answer and New Matter to the Complaint. PECO’s Answer and New Matter denied the allegations in the Complaint, and stated that the low voltage situations experienced by the Complainant were the result of temporary

equipment issues that were quickly repaired. PECO's New Matter also objected to the Complainant's claims regarding events that happened beyond the three-year statute of limitations set forth 66 Pa. C.S. § 3314.

On December 6, 2011, the evidentiary hearing in his matter was held, with Administrative Law Judge Joel Cheskis ("ALJ Cheskis") presiding. At the hearing, the Complainant testified on his own behalf, called no other witnesses to testify, and offered no exhibits into evidence. PECO presented the testimony of a senior reliability engineer and submitted three Exhibits into the Record. On December 7, 2011, a Briefing Order was issued setting the guidelines and parameters for briefs. Mr. Starzmann filed his Main Brief on January 4, 2012 and PECO filed its Main Brief on January 10, 2012.

The Initial Decision was issued on May 21, 2012. The Initial Decision sustained the Complaint, in part, and found that PECO had committed two violations of the Commission's service voltage regulation at 52 Pa. Code § 57.14 – once on May 24, 2010 and once on June 11, 2010. The I.D. recommended a civil penalty of \$250 for the May 24, 2010 incident, and \$500 for the June 11, 2010 incident.

### **EXCEPTION NO. 1**

#### **The ALJ Erred as a Matter of Law in Concluding That the Low Voltage Episodes Constituted Violations of 52 Pa. Code 57.14.**

The violations recommended against PECO by the ALJ stem from two separate incidents of low voltage: one on May 24, 2010 and one on June 11, 2010. It is clear from the record that neither of these incidents occurred during "normal system operations", and therefore neither of the incidents should be grounds for a violation or the imposition of civil penalties against PECO. The ALJ's recommendation of a violation and civil penalties against PECO is based on a misinterpretation of Section

57.14 of the Commission's regulations, and therefore the ALJ's findings should not be adopted by the Commission.

**a. The ALJ's improperly interpreted the "normal system operation" limitation in Section 57.14**

PECO acknowledged on the record that the Complainant experienced low voltage on May 24, 2010 (Tr. at 9-10) resulting from a rare and isolated incident. Tr. at 16-17, 35-37. Specifically, PECO's investigation revealed that a lightning strike broke the insulators and severed a tap or connection. Tr. at 36. A burnt C phase tap was found at the location. Tr. at 36. This event caused Mr. Starzmann to experience a voltage sag. Tr. at 36. A senior reliability engineer for PECO Energy testified:

"[t]his particular incident is very rare because the 34,000 system is a wire horizontal entanglement on the pole and its conductors aren't terribly far apart from one another. [To] sustain damaging amount of energy to break insulators, to severe pretty substantial aluminum taps. It takes a lot of energy for that not to flash over to one of the other phases for something grounded and tripped off the many devices that we have. **It is extremely unusual to have a phase part in such a way that it just prevents voltage from flowing through but doesn't create an arc and doesn't trip something ..., especially in a 34 KV system.**" [Emphasis added] (Tr. at 37, 44)

The ALJ rejected PECO's argument that that the May 24, 2010 low voltage incident did not occur during normal system operations, and instead concluded " that substantial record evidence demonstrates that PECO has violated Section 57.14 of the Commission's regulations."<sup>3</sup>

With respect to June 11, 2010 incident, PECO disputed the fact that a voltage sag occurred. On that date, PECO temporarily reconfigured its distribution system in the vicinity of Mr. Starzmann's home in order to complete some maintenance work. (Tr., 39). Mr. Starzmann contacted PECO that day to report low voltage at his house. (PECO

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<sup>3</sup> I.D., at p. 9

Ex. 2). PECO's witness Mr. Baldwin stated that it was "conceivable" that the maintenance work could cause Mr. Starzmann to experience low voltage, but that it was highly unlikely. (Tr. 39). Nevertheless, the ALJ found that Mr. Starzmann proved by substantial evidence that he did in fact experience a low voltage incident on June 11, 2010 in violation of Section 57.14 (I.D., at 12).

Section 57.14 of the Commission's regulations sets forth allowable voltage variations for electricity service. The relevant portions of Section 57.14 are reprinted below:

**§ 57.14 Service voltage.**

\* \* \* \*

(b) *Allowable voltage variation (primarily lighting)*. For service rendered primarily for lighting purposes, the allowable variation in voltage measured at the service terminals of the customer may not exceed, for a longer period than 1 minute in each instance, 5% above or below the standard nominal service voltage and a total variation from minimum to maximum of 8% during normal system operation.

(c) *Allowable voltage variation (primarily power)*. For service rendered primarily for power purposes, the allowable variation in voltage measured at the service terminals of the customer may not exceed, for a longer period than 1 minute in each instance, 10% above or below the standard nominal service voltage during normal system operation.

(d) *Variation in excess of allowable limits*.

(1) A public utility may, if approved by the Commission, furnish service under conditions of greater voltage variations if there is a filing of the following with the Commission:

(i) A copy of existing contracts containing a provision for the supply of service with such greater variations of voltage.

(ii) A copy of contracts made which contemplate the supply of service under conditions of greater voltage variations and which in each case contain a clause stating the probable variations in voltage which will occur in the service rendered under such contract, and further that such greater variations in voltage will not result in unreasonable discrimination in favor of or against any customer.

(2) Variations of voltage in excess of those specified, caused by the operations of the facilities of the customer in violation of his contract or the filed tariff rules of the public utility, or from causes beyond the control of the public utility, will not be considered as violations of this section.

\* \* \* \*

The ALJ's finding of a violation for the May 24, 2010 and June 11, 2010 incidents is incorrect as a matter of law, and must be rejected. On its face, Section 57.14 sets forth the allowable voltage variances "during normal system operations." Therefore, in order to find that PECO violated Section 57.14, the ALJ necessarily had to conclude that the low voltage incidents occurred during "normal system operation". This finding simply cannot be justified by any reasonable reading of Section 57.14.

An outage caused by a lightning strike, and a temporary system reconfiguration cannot be considered "normal system operation". Under the ALJ's reading of Section 57.14, the concept of "normal system operations" would be interpreted so broadly as to encompass all operational states, thereby rendering the phrase meaningless. The ALJ's interpretation of 57.14 would essentially make it a *per se* violation for a customer to experience low voltage for a period lasting more than 1 minute, regardless of the cause. A plain reading of the regulation does not support this interpretation. Because the

regulation includes the qualifying language “during normal system operation”, it is necessary to examine the circumstances underlying a voltage variation and the condition of the distribution system at the time of the variation in determining whether a violation has occurred.

PECO demonstrated that neither of the low voltage incidents occurred during “normal system operation” and therefore any voltage variation experienced during this time would not qualify as a violation. By its very nature, an outage caused by a lightning strike is not a “normal system operation”. If a storm outage is considered “normal system operation”, then one is left to wonder what circumstances could possibly be considered outside of normal operations. Similarly, the June 11, 2010 incident cannot reasonably be said to have occurred during normal system operation. PECO’s witness testified that in June 11, 2010, a main circuit was taken out of configuration temporarily for safety purposes, and that it was returned to a “normal” status later that day. Tr., 38-39. If the configuration was “restored to normal” at some point, then implicitly, the configuration was not “normal” for some period of time.

The ALJ’s findings regarding the occurrence and prevention of low voltage undermine his interpretation of Section 57.14 and demonstrate the unreasonableness of the interpretation. The ALJ found (on p. 18 of the I.D.) that “It is certainly reasonable to expect that there will be some instances of low voltage at certain times at some points in the system.” The ALJ rejected the distribution system upgrades that Mr. Starzmann requested, including installing protective switchgear and relays, automatic transferring, establishing maintenance procedures that preclude low voltage, and upgrading its distribution system, and found that “These actions are excessive and unnecessary.” (I.D.,

at 13). The ALJ also found (on p. 20 of the I.D.) that “It is not reasonable to require PECO to undertake the steps which Mr. Starzmann would like the Commission to order PECO to take.”

These findings by the ALJ are correct, and they demonstrate the flawed logic of the I.D. The ALJ recognized that the May 24 and June 11 incidents were rare, and that no remedial action was necessary as a result of the incidents. The ALJ also acknowledged that incidents of low voltage are not otherwise indicative of a larger problem with PECO’s distribution network or the service it provides to Mr. Starzmann. (I.D., at 17-18). So, on one hand, the ALJ found that low voltage is bound to occur at certain times at some points in the distribution system, and concludes that it would take an unreasonable and excessive amount of effort to protect against all incidences of low voltage. But on the other hand, the ALJ found that PECO committed a violation of the voltage variance regulations simply because low voltage occurred for a period of greater than one minute, and ordered PECO to cease and desist from further violations of Section 57.14. The ALJ’s interpretation of Section 57.14 is simply unworkable from a practical perspective. If it is acknowledged that low voltage will occur from time to time throughout a distribution system, and that no amount of effort and expense can completely prevent incidents of low voltage, then it is not reasonable to impose civil penalties against a utility when low voltage occurs under unusual system conditions. Under this interpretation, a utility would be in a perpetual state of non-compliance, because it is acknowledged that low voltage is bound to occur, while it is also acknowledged that it is not reasonable to expect a utility to take remedial measures to prevent against all instances of low voltage.

By far, the better approach to these facts is to give the intended meaning to the clause in 52 Pa. Code §57.14 that requires voltage be kept within certain parameters only during “normal system operation,” and find that a lightning strike and an out-of-configuration system are clearly not “normal system operation.” In order to avoid an absurd and unworkable result, it must be recognized that 52 Pa. Code §57.14 requires that voltage be kept within certain parameters only during “normal system operation,” and that a lightning strike and a temporary out-of-configuration system do not constitute “normal system operation.”

**b. The ALJ improperly ignored subsection (d)(2) of Section 57.14, which excuses instances of low voltage from causes beyond the utility’s control**

In addition to incorrectly interpreting Section 57.14’s “normal system operation” limitation, the ALJ also completely ignores subsection (d)(2) of the regulation, which states: “Variations of voltage in excess of those specified .....from causes beyond the control of the public utility, will not be considered as violations of this section”.<sup>4</sup> (Emphasis added). The May 24, 2010 incident outage was due to a lightning strike- a weather event which the Commission has clearly found to be beyond the control of a utility.<sup>5</sup> As such, pursuant to clear language of subsection (d)(2), any low voltage experienced on May 24, 2010 is excused, and cannot be considered a violation of the regulation.

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<sup>4</sup> 52 Pa. Code 5714(d)(2)

<sup>5</sup> Charles White v. PECO Energy Company, Docket No. C-2010-2187466 (Final Order entered May 27, 2011) citing, In Re Shenandoah Suburban Bus Lines, Inc., 355 Pa. 521, 50 A.2d 301 (1947)

**c. Civil Penalties Are Not Warranted Under the Circumstances of This Case**

Imposing a civil penalty as a result of the May 24, 2010 and June 11, 2010 incidents would be an unreasonable policy interpretation. The ALJ found that both of the incidents were rare, and that there is no remedial action that PECO could take to protect the distribution system against every incident of low voltage. There is no reasonable basis for imposing a civil penalty on an electric utility for low voltage that occurs during abnormal system conditions. Even if, hypothetically, a utility was fined for every incident of low voltage, the utility would have no way to avoid such incidents, so the Commission would be creating a regime under which the utility would be knowingly and unavoidably out of compliance with the regulations. This is not a rational policy, and certainly is not the intent of the Commission's regulations regarding allowable voltage. The more reasonable interpretation is that a low-voltage during abnormal system conditions does not constitute a violation of the regulations, but rather is an excusable event that does not warrant the imposition of a civil penalty. For these reasons and the reasons set forth above, PECO respectfully requests that the Commission reject the ALJ's recommendation of civil penalties.

**EXCEPTION NO. 2**

**The Complainant Did Not Demonstrate by Substantial Evidence that PECO Violated the Commission's Regulations With Respect to the June 11, 2010 Incident.**

It is well-settled that a decision of the Commission must be supported by substantial evidence. 2 Pa. C.S. § 704. "Substantial evidence" is such relevant evidence that a reasonable mind might accept as adequate to support a conclusion. More is required than a mere trace of evidence or a suspicion of the existence of a fact sought to

be established. Norfolk & Western Ry. Co. v. Pa. P.U.C., 489 Pa. 109, 413 A.2d 1037 (1980); Erie Resistor Corp. v. Unemployment Comp. Bd. of Review, 194 Pa. Superior Ct. 278, 166 A.2d 96 (1961); and Murphy v. Comm., Dept. of Public Welfare, White Haven Center, 85 Pa. Cmwlth Ct. 23, 480 A.2d 382 (1984).

The ALJ in this case held that Complainant experienced low voltage for a period of 30 hours on June 11, 2010 (Findings of Fact 28, 34). As set forth above, PECO submits that any low voltage that occurred on June 11, 2010 would not constitute a violation of Section 57.14, because the distribution system was temporarily out of normal configuration on June 11, 2010. But PECO also submits that the ALJ's findings of fact regarding the June 11, 2010 incident are not supported by substantial record evidence, and therefore should not be accepted by the Commission. A review of the record reveals that the Complainant produced no evidence about a low voltage episode on June 11, 2010. His testimony at the hearing consisted of generalized discussions of low voltage self-tests that he performed using a 34 year-old, uncalibrated voltmeter with no independent corroboration. The Complainant provided no details about the June 11, 2010 incident whatsoever. In fact, the complainant did not even state that he experienced low voltage on June 11, 2011. As such, the Complainant failed to meet his burden of proving his Complaint.

A person seeking affirmative relief from the Commission has the burden of proof. 66 Pa. C.S. §332(a). To satisfy his burden, the Complainant must demonstrate by a preponderance of the evidence that PECO Energy is responsible and accountable for the problem described in the complaint. Patterson v. Bell Telephone Company of Pennsylvania, 72 Pa. P.U.C. 196 (1990). It is well established that mere bald assertions,

personal opinions or perceptions do not constitute evidence. Pennsylvania Bureau of Corrections v. City of Pittsburgh, 516 Pa. 75, 532 A.2d 12 (1987). While the burden of persuasion may shift back and forth during a proceeding, the burden of proof never shifts. The burden of proof always remains on the party seeking affirmative relief from the Commission. Milkie v. Pa. PUC, 768 A.2d 1217 (Pa. Cmwlth. 2001).

The ALJ in this case appears to have relied solely on PECO Exhibit 1 and a hypothetical statement by PECO's witness for the conclusions regarding the June 11, 2010 incident and the finding that the Complainant experienced voltage below allowable limits. He states that "based on Mr. Baldwin's testimony that "it is conceivable that we perhaps may have had marginally low voltage," and the notation of "LV" (or low voltage) in PECO's own exhibits, I find that the evidence demonstrates that Mr. Starzmann did in fact experience a low voltage incident on June 11, 2010 in violation of Section 57.14" (I.D., at 12). But, as PECO's witness explained, PECO Exhibit 1 just reflected a report of a low voltage incident from Mr. Starzman, based on a call from Ms. Starzmann to PECO. (Tr. 38-39). This does not constitute proof that low voltage actually occurred – just that Mr. Starzmann reported an incidence of low voltage. The report does not contain any information regarding the extent of the alleged low voltage, the amount of voltage variation, or the duration of the incident. PECO's witness went on to explain that while certain maintenance work was being conducted in the Complainant's vicinity at the time of the low voltage report, the maintenance work being performed would not cause low voltage. (Tr. 39). While the ALJ focused on the witnesses statement that marginal low voltage could have been experienced, PECO's

witnessed testified that it is highly unlikely that the Complainant experienced any substantial voltage sag on June 11, 2010. Tr. at 37-38.

The I.D.'s conclusion regarding the *duration* of the alleged June 11, 2010 low voltage incident is also not supported by record evidence. To the contrary, this conclusion is based on a misinterpretation of PECO's Exhibit 1. Finding of Fact # 35 states "The low voltage event that occurred on June 11, 2010 lasted for more than thirty (30) hours". But, as set forth above, the Complainant introduced no evidence whatsoever regarding the alleged June 11th low voltage incident, and most certainly did not introduce any evidence regarding the duration of the incident. The ALJ's findings regarding the June 11th incident were based solely on a report from PECO's outage management system (PECO Ex. 1.) The report references a duration of 1840 minutes for the June 11 event. But, contrary to the ALJ's findings, this does not allow for a conclusion that Mr. Starzmann experienced low voltage for this entire period of time. Rather, the "1840" reference indicates the length of time that it took PECO to close the investigation of the incident. PECO witness Baldwin testified that because the incident in question was a low voltage complaint called in by a single customer, the response time was somewhat longer than the response time for a widespread outage. See Tr. p. 52. The 1840 minute duration reflects the investigation time, but not does allow for a conclusion that Mr. Starzmann experienced low voltage for 30 straight hours. The reality is that there is no evidence in the record to indicate how long Mr. Starzmann allegedly experienced low voltage on that day, because he did not testify about it.

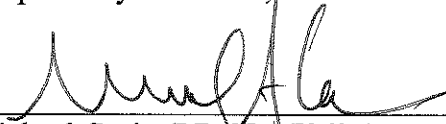
With almost no information in the record related to the June 11, 2010 incident other than a report of a call by Mr. Starzmmman, there simply is not sufficient evidence in

the record to sustain the I.D.'s conclusion that the Complainant experienced low voltage for a period of 30 hours on June 11, 2010 (Findings of Fact 28, 34). The evidence that the ALJ relies upon on page 12 of the I.D. falls squarely into the category of "a mere trace of evidence or a suspicion of the existence of a fact sought to be established" which cannot support a finding by the Commission.<sup>6</sup> Accordingly, the ALJ's recommended finding of a violation and imposition of a civil penalty against PECO should not be sustained.

### III. CONCLUSION

For the reasons set forth above, PECO respectfully requests that the Commission reject the I.D.'s recommended finding of violations and imposition of civil penalties, reverse the Initial Decision, and dismiss the Complaint, with prejudice.

Respectfully submitted,



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Counsel for PECO Energy Company

Dated: June 11, 2012

<sup>6</sup> Norfolk & Western Ry. Co. v. Pa. P.U.C., 489 Pa. 109, 413 A.2d 1037 (1980); Erie Resistor Corp. v. Unemployment Comp. Bd. of Review, 194 Pa. Superior Ct. 278, 166 A.2d 96 (1961); and Murphy v. Comm., Dept. of Public Welfare, White Haven Center, 85 Pa. Cmwlth Ct. 23, 480 A.2d 382 (1984).

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

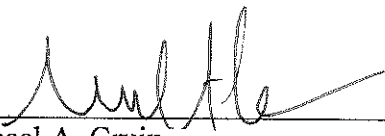
John R. Starzmann	:	
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Complainant	:	
	:	Docket No. C-2010-2192759
v.	:	
	:	
PECO Energy Company	:	
	:	
Respondent	:	

**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

John Starzmann  
515 London Tract Road  
Landenberg, PA 19350

  
\_\_\_\_\_  
Michael A. Gruin

DATED: June 11, 2012