

**Legal Department**

Exelon Business Services Company  
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June 20, 2012

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

**Re: Raymond Swedlow t/a Joe Sixpack, Inc. v. PECO Energy Company  
PUC Docket No. C-2012-2305161**

Dear Ms. Chiavetta:

Enclosed for filing with the Commission are the following documents and copies in the matter referenced above.

—	Answer (1 original)
—	Answer & New Matter (1 original)
--	Motion to Dismiss (original)
<u>X</u>	Motion for Judgment on the Pleadings (1 original)
—	Preliminary Objection (1 original)
—	Exceptions (1 original)
—	Reply Exceptions (1 original)
—	Main Brief (1 original)
—	Reply Petition (1 original)

I have enclosed a Certificate of Service showing that a copy of the above document was served on the interested parties. Thank you for your time and attention on this matter.

Very truly yours,



Shawane Lee  
Counsel for PECO Energy Company

SL/adz

Enc.

Scheduling Recommendation: Call of the docket \_\_\_ Non Call of the docket \_\_\_

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

<b>RAYMOND SWERDLOW t/a</b>	:	
<b>JOE SIXPACK, INC.</b>	:	
<b>v.</b>	:	<b>DOCKET NO. C-2012-2305161</b>
	:	
<b>PECO ENERGY COMPANY</b>	:	

**NOTICE TO PLEAD**

Pursuant to 52 Pa. Code §§ 5.101 and 5.62(c), you are hereby notified that, if you do not file a written response denying or correcting the enclosed Preliminary Objection of PECO Energy Company within 10 days from service of this notice, a decision may be rendered against you. All pleadings, such as a Reply to Preliminary Objection, must be filed with the Secretary of the Pennsylvania Public Utility Commission, with a copy served to counsel for PECO Energy Company, Shawane L. Lee, and where applicable, the Administrative Law Judge presiding over the issue.

File with:  
Rosemarie Chiavetta, Secretary  
Pennsylvania Public Utility Commission  
Commonwealth Keystone Building  
400 North Street, Second Floor  
Harrisburg, PA 17120

With a copy to:  
Shawane L. Lee, Esq.  
PECO Energy Company  
2301 Market Street, S-23  
Philadelphia, PA 19103

Dated at Philadelphia, PA, June 20, 2012



---

Shawane L. Lee  
Counsel for PECO Energy Company  
2301 Market Street S-23  
Philadelphia, PA 19101-8699  
215-841-6863  
Shawane.Lee@exeloncorp.com

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

<b>RAYMOND SWERDLOW t/a</b>	<b>:</b>	
<b>JOE SIXPACK, INC.</b>	<b>:</b>	
<b>v.</b>	<b>:</b>	<b>DOCKET NO. C-2012-2305161</b>
	<b>:</b>	
<b>PECO ENERGY COMPANY</b>	<b>:</b>	

**RESPONDENT, PECO ENERGY COMPANY'S  
MOTION FOR JUDGMENT ON THE PLEADINGS**

Respondent, PECO Energy Company ("PECO Energy"), pursuant to 52 Pa. Code § 5.102(a) respectfully petitions this Honorable Commission to dismiss the instant Complaint for the following reasons:

**I. PROCEDURAL HISTORY:**

1. On or about May 18, 2012, Complainant, Raymond Swerdlow d/b/a Joe Sixpack, Incorporated, filed a Formal Complaint with the Pennsylvania Public Utility Commission ("PUC").
2. On May 18, 2012 PECO Energy was served the above-mentioned Formal Complaint. A copy of Complainant's Formal Complaint is attached hereto as (Exhibit 1).
3. On May 30, 2012, PECO Energy filed an Answer & New Matter to the Formal Complaint. A copy of PECO Energy's Answer & New Matter is attached hereto as (Exhibit 2).
4. Pursuant to 52 Pa. Code § 5.63, Complainant had twenty days from the filing date of PECO's New Matter on May 30, 2012, to respond.

5. To date, over twenty (20) days have passed since PECO filed its New Matter on May 30, 2012. As Complainant has failed to timely respond to the New Matter, PECO is filing this Motion seeking Judgment on the Pleadings.

## **II. RELEVANT FACTS:**

6. In its Complaint, the Complainant alleges that it operates a business at 7015 Roosevelt Boulevard, Philadelphia, PA.

7. There is another business located at the premises.

8. There is only one meter at the premises and the two businesses are connected to the same meter.

9. Complainant alleges that it has been paying current electricity charges for both businesses.

10. Complainant additionally alleges that PECO Energy has refused to place the electric utility bill in the name of the corporate entity, rather than Raymond Swerdlow “trading as” Joe Sixpack.

11. Complainant requests, inter alia, that the Public Utility Commission (“PUC”) have PECO Energy (1) place the invoice in the name of the corporate business entity; (2) determine the usage by each business entity at the property; (3) establish a payment plan for the balance owed; and (4) determine the responsibility of the landlord to have utility service placed in the tenant’s name.

### **III. LEGAL ARGUMENT**

#### **A. Standard of Review**

12. The Commission's regulations at 52 Pa. Code §5.102(a) permits any party to move for summary judgment or judgment on the pleadings after the pleadings are closed, but within such time as to not delay a hearing.

13. Under 52 Pa. Code §5.102(d)(1), the presiding officer will grant the motion if the pleadings, depositions, answers to interrogatories, admissions and affidavits show that there is no genuine issue as to a material fact and that the moving party is entitled to judgment as a matter of law.

14. The moving party bears the burden of showing that no genuine issue of material fact exists and that it is entitled to judgment as a matter of law. The Commission must view the record in the light most favorable to the non-moving party, giving that party the benefit of all reasonable inferences. First Mortgage Co. of Pennsylvania v. McCall, 459 A.2d 406 (Pa. Super. 1983).

15. The provision at 52 Pa. Code §5.102(c) serves judicial economy by avoiding a hearing where no factual dispute exists. If no factual issue pertinent to the resolution of the case exists, a hearing is unnecessary. Lehigh Valley Power Committee v. Pennsylvania Public Utility Commission, 563 A.2d. 557 (Pa. Cmwlth. 1989).

**B. The Complainant's Complaint should be dismissed because it is a commercial customer; and the Complainant is required to be represented by counsel.**

16. The Complainant is a commercial customer operating a beer distribution store at the address at issue. See Web Advertisement, attached hereto as (Exhibit 3).

17. The Complainant was incorporated on April 22, 1997. See Complainant's corporate registration with the Pennsylvania Department of State, attached hereto as (Exhibit 4).

18. As a commercial customer and corporation, Complainant is required to be represented by counsel in adversarial proceedings before the Commission.

19. The proceedings become adversarial at the time when respondent files an Answer. A Complaint filed by a corporation will be dismissed for failure to be represented by an attorney in an adversarial proceeding. 52 Pa. Code §1.8; 1.21-§ 1.23; In Re: Checker Cab, 49 Pa. PUC 159, 160 (1975), Moore v. I. Berman and Cross, Inc., Pa. PUC 427, 428 (1975).

20. On May 30, 2012, PECO Energy filed an Answer with New Matter to the Complainant's Complaint. See (Exhibit 2).

21. Once PECO Energy filed the Answer with New Matter the current PUC matter became adversarial. See 52 Pa. Code §1.8; 1.21-§ 1.23; In Re: Checker Cab, 49 Pa. PUC 159, 160 (1975), Moore v. I. Berman and Cross, Inc.

22. To date, the Complainant Corporation has not had counsel enter an appearance for this matter.

23. Accordingly, PECO Energy requests that the Commission dismiss the Complainant's Complaint for failure to be represented by counsel.

**C. The Complainant's portion of the Complaint, requesting a payment agreement should be dismissed because it is a commercial customer and the PUC cannot issue payment agreements to commercial customers.**

24. In the Formal Complaint, the Complainant is requesting that the PUC order PECO Energy to provide Complainant with a payment agreement. See (Exhibit 1).

25. The Complainant states "PECO has told me that they are not responsible for or have the option to modify a payment plan because we had appealed to the PUC." See (Exhibit 1).

26. The Complainant requests that the PUC order PECO Energy to "establish payment plan[s] with businesses so they can address responsibility for current past usage". See (Exhibit 1).

27. In Section 4A of the Complaint, the Complaint states "I would like a modified payment agreement." See (Exhibit 1).

28. It is well-established law that commercial customers are not entitled to the payment agreement provisions codified under of 66 Pa.C.S §1405 and 52 Pa. Code.Chp 56.

29. While the Commission is authorized under the Public Utility Code to establish payment arrangements that provide for the eventual payment of a residential customer's entire outstanding balance, Mill v. Pa. Public Utility Commission, 67 Pa. Commonwealth Ct. 597, 602, n. 4, 447 A.2d. 1100 (1982), neither the Commission's regulations nor the Public Utility Code establishes a similar right for a commercial or industrial customer.

30. In this case, the Complainant is a corporation and commercial customer, requesting a payment agreement on an outstanding balance.

31. The Complainant's request for a payment agreement should be dismissed as the Complainant is a commercial customer and the PUC has no jurisdiction to order PECO Energy to give the Complainant a payment agreement.

32. By way of further reply, PECO Energy issued Complainant a payment agreement on November 17, 2011 on a balance of \$69,243.91 consistent with 52 Pa. Code § 56.14. See Account Activity Statement, attached hereto as (Exhibit 5).

33. Under this agreement, Complainant was required to pay thirty-two (32) installments of \$2,119.53. See (Exhibit 5).

34. Complainant is not in compliance with the agreement. See (Exhibit 5)

35. Further, on January 4, 2012, the Complainant filed an informal complaint with the Bureau of Consumer Services at Complaint #002923384. See BCS Case Details Report #002923384, attached hereto as (Exhibit 6).

36. In the Informal Complaint, the Complainant disputed a \$67,713.47 bill and requested a payment agreement. See (Exhibit 6).

37. The BCS dismissed the complaint, stating that "this is a commercial account and we have limited jurisdiction." See BCS Decision Report #002923384, attached hereto as (Exhibit 7).

38. PECO Energy avers that this Honorable Commission should uphold the decision of the BCS in declining to offer the Complainant a payment agreement, and dismiss that portion of the Complainant's Complaint.

**IV. CONCLUSION**

39. PECO Energy has not been served with a response to its New Matter, and therefore it requests that the facts stated therein be deemed admitted. 52 Pa.Code §5.63(b) (providing that facts in new matter may be deemed admitted if there is no reply).

40. Because no factual dispute exists and the Complaint fails to state a claim for which relief can be granted, PECO is entitled to judgment as a matter of law .

**WHEREFORE**, PECO Energy Company respectfully requests that your Honorable Commission dismiss the Complainant's Complaint because Complainant is not legally entitled to the relief requested.

Respectfully Submitted,



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Shawane L. Lee  
Counsel for PECO Energy Company  
2301 Market Street, S23-1  
P.O. Box 8699  
Philadelphia, PA 19101-8699  
(215) 841-6841  
Fax: 215.568.3389

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

<b>RAYMOND SWERDLOW t/a</b>	:	
<b>JOE SIXPACK, INC.</b>	:	
<b>v.</b>	:	<b>DOCKET NO. C-2012-2305161</b>
	:	
<b>PECO ENERGY COMPANY</b>	:	

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**VERIFICATION**

I, Shawane L. Lee, hereby declare that I am counsel for PECO Energy Company; that as such I am authorized to make this verification on its behalf; that the facts set forth in the foregoing Pleading are true to the best of my knowledge, information and belief, and that I make this verification subject to the penalties of 18 Pa. C.S. § 4904 pertaining to false statements to authorities.

Date: June 20, 2012



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Shawane L. Lee

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**RAYMOND SWERDLOW t/a**           :  
**JOE SIXPACK, INC.**            :  
                                          :  
                                          :  
**PECO ENERGY COMPANY**       :

**DOCKET NO. C-2012-2305161**

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**CERTIFICATE OF SERVICE**

I, Shawane L. Lee, hereby certify that I have this day served a copy of PECO Energy Company's Answer in the above matter upon all interested parties by mailing a copy, properly addressed and postage prepaid to:

Raymond Swerdlow t/a Joe Sixpack, Inc.  
7015 Roosevelt Boulevard  
Philadelphia, PA 19149

Dated at Philadelphia, Pennsylvania, June 20, 2012.



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Shawane L. Lee  
Counsel for PECO Energy Company  
2301 Market Street, S23-1  
P.O. Box 8699  
Philadelphia, PA 19101-8699  
(215) 841-6841  
Fax: 215.568.3389  
Shawane.Lee@exeloncorp.com

# **EXHIBIT “1”**

PENNSYLVANIA PUBLIC UTILITY COMMISSION

Formal Complaint Form

RECEIVED  
2012 MAY 17 AM 9:43  
PA. PUBLIC UTILITY COMMISSION  
SECRETARY'S BUREAU

Please print in ink or type.

1. CUSTOMER (COMPLAINANT) INFORMATION

Your name, mailing address, county, telephone number, utility account number and service address:

Name Joe SixPack inc. Raymond Swadlow pros

Street/P.O. Box 7015 ROOSEVELT BLVD Apt # \_\_\_\_\_

City Phila State Pa Zip 19149

County Phila

Daytime Telephone Number Where We Can Contact You: (215) 338-6384

E-mail Address (optional): \_\_\_\_\_

Utility Account Number 72600-89028  
(from your bill)

If your complaint involves utility service provided to a different address than your mailing address, please list this information below.

Name \_\_\_\_\_

Street/P.O. Box \_\_\_\_\_

City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_

2. FULL NAME OF UTILITY COMPANY (RESPONDENT):

PECO ENERGY

3. TYPE OF UTILITY (check one)

- ELECTRIC
- GAS
- WATER
- TELEPHONE  
(local, long distance)
- STEAM HEAT
- WASTE WATER
- MOTOR CARRIER  
(e.g., taxi, moving company, limousine)

The Landlord claims he is now using a Third Party to split Billing although I have yet to receive an invoice from the Third Party -

I believe it is unfair that I am responsible to pay for, bill & collect <sup>ELECTRICITY</sup> the use of another business that I have no financial or other interest in.

ABC has told me that they are not responsible for or have the option to modify a Payment Plan because we had appealed to the PUC to look at the issue. The PUC says that they do because we are a commercial account.

6. PROTECTION FROM ABUSE

Answer the following question if your complaint is against a natural gas distribution utility, an electric distribution utility or a water distribution utility AND your complaint is about a billing problem, a request to receive service, a security deposit request, termination of service or a request for a payment agreement.

Has a court granted a "Protection from Abuse" order for your personal safety or welfare?

YES

NO

*N/A*

7. PRIOR UTILITY CONTACT

Answer the following question only if you are a residential customer and your complaint is against an electric distribution utility, natural gas distribution utility or a water distribution utility.

Have you spoken to a utility company representative about this complaint?

YES (includes appeals of BCS determinations)

NO

*N/A*

If you tried to, but could not speak to a utility company representative about your complaint, please explain why.

8. LEGAL REPRESENTATION (IF ANY)

If you are represented by a lawyer in this matter you must provide your lawyer's name, address, telephone number, and e-mail address, if known.

Lawyer's Name *N/A*

Street \_\_\_\_\_

City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_

Area Code/Phone Number \_\_\_\_\_

E-mail Address (If Known) \_\_\_\_\_

# **EXHIBIT “2”**

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**RAYMOND SWERDLOW t/a**                   :  
**JOE SIXPACK, INC.**                    :  
                                                  :  
                                                  :  
**PECO ENERGY COMPANY**            :

**DOCKET NO. C-2012-2305161**

**NOTICE TO PLEAD**

Pursuant to 52 Pa. Code §§ 5.101 and 5.62(c), you are hereby notified that, if you do not file a written response denying or correcting the enclosed Preliminary Objection of PECO Energy Company within 10 days from service of this notice, a decision may be rendered against you. All pleadings, such as a Reply to Preliminary Objection, must be filed with the Secretary of the Pennsylvania Public Utility Commission, with a copy served to counsel for PECO Energy Company, Shawane L. Lee, and where applicable, the Administrative Law Judge presiding over the issue.

File with:  
Rosemarie Chiavetta, Secretary  
Pennsylvania Public Utility Commission  
Commonwealth Keystone Building  
400 North Street, Second Floor  
Harrisburg, PA 17120

With a copy to:  
Shawane L. Lee, Esq.  
PECO Energy Company  
2301 Market Street, S-23  
Philadelphia, PA 19103

Dated at Philadelphia, PA, May 30, 2012



---

Shawane L. Lee  
Counsel for PECO Energy Company  
2301 Market Street S-23  
Philadelphia, PA 19101-8699  
215-841-6863  
Shawane.Lee@exeloncorp.com

**PECO ENERGY**

**EXHIBIT** 2

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**RAYMOND SWERDLOW t/a**                   :  
**JOE SIXPACK, INC.**                    :  
                                                  :  
                                                  :  
**PECO ENERGY COMPANY**            :

**DOCKET NO. C-2012-2305161**

**ANSWER & NEW MATTER OF RESPONDENT**  
**PECO ENERGY COMPANY**

PECO Energy Company (“PECO Energy”), pursuant to 52 Pa. Code § 5.61, responds to the Complaint and states:

1. Admitted.
2. Admitted.
3. Admitted.

4. Denied. Unless specifically admitted herein, PECO Energy denies all material allegations of fact and conclusions of law in the instant Complaint. In its Complaint, the Complainant Raymond Swerdlow “trading as” Joe Sixpack alleges that he operates a business at 7015 Roosevelt Boulevard, Philadelphia, PA. There is another business located at the premises. There is only one meter at the premises and the two businesses are connected to the same meter. Complainant alleges that his business has been paying current electricity charges for both businesses. Complainant additionally alleges that PECO Energy has refused to place the electric utility bill in the name of the corporate entity, rather than Raymond Swerdlow “trading as” Joe Sixpack. Complainant requests, inter alia, that the Public Utility Commission (“PUC”) have PECO Energy (1) place the invoice in the name of the corporate business entity; (2) determine the usage by each business entity at the property;

(3) establish a payment plan for the balance owed; and (4) determine the responsibility of the landlord to have utility service placed in the tenant's name.

Preliminarily, PECO Energy avers that the Complainant is a commercial customer operating a beer distribution store at the address at issue. See Web Advertisement, attached hereto as Exhibit "A". The Complainant was incorporated on April 22, 1997. See Complainant's corporate registration with the Pennsylvania Department of State, attached hereto as Exhibit "B". As a commercial customer, Complainant is required to be represented by counsel in adversarial proceedings before the Commission.<sup>1</sup>

PECO Energy's records reveal that service at the address 7015 Roosevelt Boulevard, Philadelphia, PA was in the name of Troung, LLC. On April 7, 2009, Troung, LLC requested that the electric service be disconnected. On or about August 2, 2011, PECO Energy noted there was electric consumption on the inactive meter at the property. On October 3, 2011, PECO Energy sent a 72-hour termination notice to the premises for failure to apply for service. PECO Energy was unable to terminate service because the company had no access to the meter.

On October 3, 2011, the Complainant called PECO Energy to advise that he had received a termination notice. PECO Energy requested documentation for the Corporation, including the tax identification number, two forms of identification and the lease agreement.

On October 5, 2011, the Complainant presented the required documentation to establish service. PECO Energy advised the Complainant that based on the documentation

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<sup>1</sup> The proceedings become adversarial at the time when respondent files an Answer. A Complaint filed by a corporation will be dismissed for failure to be represented by an attorney in an adversarial proceeding. 52 Pa. Code §1.8; 1.21-§ 1.23; In Re: Checker Cab, 49 Pa. PUC 159, 160 (1975), Moore v. I. Berman and Cross, Inc., Pa. PUC 427, 428 (1975). Accordingly, PECO request that the Commission establish a date certain by which Complainant is required to have an attorney enter an appearance in this matter.

he provided, including the lease agreement, the connect date would be effective April 7, 2009, as the Complainant had been operating at the premises and using electric service at the premises since that time. Accordingly, the Complainant would receive a bill from April 7, 2009 through April 6, 2010, in the amount of \$24,861.70.

On November 4, 2011, the Complainant called because a shut off notice was received on a past due balance of \$25,234.53. PECO Energy offered the Complainant payment terms over twelve (12) months with installments of \$2,103.00 per month plus the current utility bill. Subsequently, there were three bills issued for the following:

4/6/10 – 5/5/10	\$27,434.30
5/5/10 – 3/8/11	\$25,880.86
3/8/11 – 11/2/11	\$16,078.75

See Account Activity Statement, attached hereto as Exhibit “C”.

On November 17, 2011, the Complainant contacted PECO Energy regarding the bill. PECO Energy established a payment agreement on the \$69,243.91 balance with an upfront payment of \$34,210.96 and two monthly installments of \$17,701.44.

On January 3, 2012, the Complainant requested a new payment agreement. PECO Energy offered the Complainant a down payment of \$33,781.73 upfront and the balance over two months in installments of \$17,271.86.

On January 4, 2012, the Complainant filed an informal complaint with the Bureau of Consumer Services at Complaint #002923384. In his Complaint, the Complainant disputed the \$67,713.47 bill. See BCS Case Details Report #002923384, attached hereto as Exhibit “D”. The Complainant stated there were two businesses connected to one meter and he

would like the PUC to figure out what he owes. The BCS dismissed the complaint, stating that “this is a commercial account and we have limited jurisdiction.” See BCS Decision Report #002923384, attached hereto as Exhibit “E”.

On January 9, 2012, a PECO Energy representative contacted the Complainant in response to his BCS Complaint. The representative explained the back-billing and offered a payment agreement of thirty-two (32) months on the balance of \$67,825.07. Additionally, the representative set up a high bill field visit to take place on January 23, 2012.

On January 23, 2012, the High Bill Field technician verified the accuracy of the meter. The technician observed there was a sub-meter for a furniture store located at the premises, which was not PECO Energy’s property. See High Bill Report, attached hereto as Exhibit “F”. The Complainant advised PECO Energy that the Emergency Management Systems bills the furniture store from the sub-meter. The technician explained to the Complainant that PECO Energy has no involvement with the sub-meter.

PECO Energy avers that the Complainant was properly billed for the usage from April 7, 2009 because Joe Sixpack was operating at the premises during that period and using electric service that was not paid. Section 5.1 of the Electric Service Tariff states:

#### **5.1 PAYMENT OBLIGATION**

The Company may, at its discretion, determine liability for a past due balance by:

- 1) Use of Company records that contain information previously provided to the Company;
- 2) Information contained on a valid mortgage, lease, deed or renter’s license;
- 3) Use of commercially available public records databases;
- 4) Government and property ownership records

In addition, 52 Pa. Code § 56.14 states:

When a public utility renders a make-up bill for previously unbilled public utility service which accrued within the past 4 years resulting from public utility error, meter failure, leakage that could not reasonably have been detected or loss of service, or four or more consecutive estimated bills and the make-up bill exceeds the otherwise normal estimated bill

for the billing period during which the make-up bill is issued by at least 50% or at least \$50, whichever is greater:

- (1) The public utility shall explain the bill to the customer and make a reasonable attempt to amortize the bill.
- (2) The period of the amortization may, at the option of the customer, extend at least as long as:
  - (i) The period during which the excess amount accrued.

See 52 Pa. Code § 56.14.

In this case, the Complainant does not dispute the fact that Joe Sixpack has operated the business at the service address and used electric service at least since April 7, 2009. It appears the Complainant's dispute is with the other business tenant occupying the premises because they have not shared responsibility for the electric bill. PECO Energy cannot force the other business tenant to take responsibility for the electric bill because the bill is not in the business tenant's name. Further, PECO Energy cannot determine how much service the business tenant is using because the Complainant and the tenant share a meter. Consequently, Complainant's relief should be sought against the tenant rather than PECO Energy.

Further, the Complainant requests that the PUC order PECO Energy to give the Complainant a payment agreement on the balance. It is well-established law that commercial customers are not entitled to the payment agreement provisions codified under of 66 Pa.C.S §1405 and 52 Pa. Code.Chp 56. While the Commission is authorized under the Public Utility Code to establish payment arrangements that provide for the eventual payment of a residential customer's entire outstanding balance, Mill v. Pa. Public Utility Commission, 67 Pa. Commonwealth Ct. 597, 602, n. 4, 447 A.2d. 1100 (1982), neither the Commission's regulations nor the Public Utility Code establishes a similar right for a commercial or

industrial customer. Therefore, Complainant's request for payment terms should be dismissed.

By way of further reply, PECO Energy issued Complainant a payment agreement on November 17, 2011 on a balance of \$69,243.91, consistent with 52 Pa. Code § 56.14. See Account Activity Statement attached hereto as Exhibit "C". Under this agreement, Complainant was required to pay thirty-two (32) installments of \$2,119.53. Complainant is not in compliance with the agreement.

5. This paragraph is a request for relief and no answer is required.

6. Admitted.

7. Admitted.

8. PECO Energy neither admits nor denies the allegations in paragraph 8. PECO is without knowledge or information sufficient to form a belief as to the truth of this averment and, therefore, such allegation is deemed denied.

9. Paragraph 9 is a Verification and Signature to which no response is required.

10. Paragraph 10 contains information regarding Filing, to which no response is required.

**NEW MATTER OF RESPONDENT, PECO ENERGY COMPANY**

PECO Energy, pursuant to 52 Pa. Code § 5.62(b), further responds to the Complaint and states:

1. Complainant is a commercial customer operating a beer distribution store at the address at issue. See Web Advertisement, attached hereto as Exhibit "A".

2. The Complainant was incorporated on April 22, 1997. See Complainant's corporate registration with the Pennsylvania Department of State, attached hereto as Exhibit "B".

3. It is well-established law that commercial customers are not entitled to the payment agreement provisions codified under of 66 Pa.C.S §1405 and 52 Pa. Code.Chp 56. While the Commission is authorized under the Public Utility Code to establish payment arrangements that provide for the eventual payment of a residential customer's entire outstanding balance, Mill v. Pa. Public Utility Commission, 67 Pa. Commonwealth Ct. 597, 602, n. 4, 447 A.2d. 1100 (1982), neither the Commission's regulations nor the Public Utility Code establishes a similar right for a commercial or industrial customer.

4. Therefore, Complainant's request for payment terms should be dismissed.

5. Likewise, as a commercial customer, Complainant is required to be represented by counsel in adversarial proceedings before the Commission. The proceedings become adversarial at the time when respondent files its Answer.

6. A Complaint filed by a corporation will be dismissed for failure to be represented by an attorney in an adversarial proceeding. 52 Pa. Code §1.8; 1.21-§ 1.23; In Re: Checker Cab, 49 Pa. PUC 159, 160 (1975), Moore v. L Berman and Cross, Inc., Pa. PUC 427, 428 (1975).

**WHEREFORE**, PECO Energy Company respectfully requests that your Honorable Commission establish a date certain by which Complainant is required to have an attorney enter an appearance in this matter. Additionally, the complaint should be dismissed because Complainant is not legally entitled to relief requested.

Respectfully Submitted,



---

Shawane L. Lee  
Counsel for PECO Energy Company  
2301 Market Street, S23-1  
P.O. Box 8699  
Philadelphia, PA 19101-8699  
(215) 841-6841  
Fax: 215.568.3389

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

<b>RAYMOND SWERDLOW t/a</b>	:	
<b>JOE SIXPACK, INC.</b>	:	
v.	:	<b>DOCKET NO. C-2012-2305161</b>
	:	
<b>PECO ENERGY COMPANY</b>	:	

---

**VERIFICATION**

I, Shawane L. Lee, hereby declare that I am counsel for PECO Energy Company; that as such I am authorized to make this verification on its behalf; that the facts set forth in the foregoing Pleading are true to the best of my knowledge, information and belief, and that I make this verification subject to the penalties of 18 Pa. C.S. § 4904 pertaining to false statements to authorities.

Date: May 30, 2012



---

Shawane L. Lee

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

<b>RAYMOND SWERDLOW t/a</b>	:	
<b>JOE SIXPACK, INC.</b>	:	
v.	:	<b>DOCKET NO. C-2012-2305161</b>
	:	
<b>PECO ENERGY COMPANY</b>	:	

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**CERTIFICATE OF SERVICE**

I, Shawane L. Lee, hereby certify that I have this day served a copy of PECO Energy Company's Answer in the above matter upon all interested parties by mailing a copy, properly addressed and postage prepaid to:

Raymond Swerdlow t/a Joe Sixpack, Inc.  
7015 Roosevelt Boulevard  
Philadelphia, PA 19149

Dated at Philadelphia, Pennsylvania, May 30, 2012.



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Shawane L. Lee  
Counsel for PECO Energy Company  
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(215) 841-6841  
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**EXHIBIT “3”**



7015 Roosevelt Boulevard  
Philadelphia, PA 19149 | 215 338-6384

Fine Beer From Large and Small Brewers Worldwide  
Corporate Gift Baskets • Beer & Liquor Collectibles  
Glassware • ID Verification Equipment (trade only)

check back soon! web site under development.



Named  
"Best Place to Buy Beer"  
(Philadelphia Magazine)



Joe Sixpack's  
"Best Places for Six Packs"



Named One of 79  
"Remarkable Retailers"  
(in the world)



**EXHIBIT “4”**



### Corporations

Online Services | Corporations | Forms | Contact Corporations | Business Services

- Search
- By Business Name
- By Business Entity ID
- Verify
- Verify Certification
- Online Orders
- Register for Online Orders
- Order Good Standing
- Order Certified Documents
- Order Business List
- My Images
- Search for Images

### Business Entity Filing History

Date: 5/30/2012 (Select the link above to view the Business Entity's Filing History)

#### Business Name History

Name	Name Type
JOE SIX PACK, INC.	Current Name

#### Business Corporation - Domestic - Information

**Entity Number:** 2751282  
**Status:** Active  
**Entity Creation Date:** 4/22/1997 3:45:29 PM  
**State of Business.:** PA  
**Registered Office Address:** 7015 ROOSEVELT BLVD  
 PHILADELPHIA PA 19149-0  
 Philadelphia  
**Mailing Address:** No Address

#### Officers

**Name:** RAYMOND SWERDLOW  
**Title:** President  
**Address:** 7015 ROOSEVELT BLVD  
 PHILADELPHIA PA 19149-51

**Name:** RAYMOND SWERDLOW  
**Title:** Treasurer  
**Address:** 7015 ROOSEVELT BLVD  
 PHILADELPHIA PA 19149-51



**EXHIBIT “5”**



PECO Account Activity Statement

Date: 05/24/12  
Page: 2 of 2

DATE	CHANGE TYPE	BILLING PERIOD	READ	METER #	CHANGE AMOUNT	CREDIT AMOUNT	TOTAL BILL	BALANCE FORWARD	DOB DATE	KWH
01/09/12	ELECTRIC SERVICE	12/05/11 01/08/12	23936	001420957	\$1940.90		\$69915.97	\$50273.63	01/31	16560
01/09/12	DEPOSIT					\$67825.07				38
01/09/12	INSTALLMENT PAYMENT AGREEMENT					\$1940.90				
01/23/12	Regular Bill				\$17701.44					
01/24/12	Electric Meter Reading		23914	001420957						
01/30/12	Payment Agreement									
02/08/12	ELECTRIC SERVICE	01/08/12 02/07/12	23998	001420957	\$1518.68		\$3788.21	\$150.00	03/01	12960
02/08/12	SPECIAL PAYMENT AGREEMENT				\$2119.53					29
02/27/12	Regular Bill				\$1479.37					
03/08/12	ELECTRIC SERVICE	02/07/12 03/07/12	24156	001420957	\$2119.53		\$5868.43	\$2269.53	03/30	12640
03/08/12	SPECIAL PAYMENT AGREEMENT									29
03/28/12	Regular Bill				\$58.33					
04/04/12	Late Payment Charge				\$1484.92					
04/06/12	ELECTRIC SERVICE	03/07/12 04/05/12	24310	001420957	\$2119.53		\$7561.84	\$3947.39	04/30	12320
04/06/12	SPECIAL PAYMENT AGREEMENT									28
04/06/12	Regular Bill				\$1739.33					
05/07/12	ELECTRIC SERVICE	04/05/12 05/06/12	24480	001420957	\$2119.53		\$1153.24	\$7674.38	05/29	13600
05/07/12	SPECIAL PAYMENT AGREEMENT									37
05/07/12	Late Payment Charge				\$112.54					
05/18/12	Regular Bill									
05/18/12	Payment					\$7561.84				

As of 05/24/12, remaining agreement balance is \$59,346.95

**EXHIBIT “6”**

## Case Details Report

BCS Case #: 002923384 BCS Bill Account #: 7260089028  
Customer Name: RAYMOND SWERDLOW  
Service Address: 7015 ROOSEVELT BLVD

Mailing Address: PHILADELPHIA, PA 19149

Home Phone: (215) 338-6384  
Business Phone: () -  
Business name:  
Alternate contact:

Date Case Opened: 2012-01-04 Date Cut Out: 9999-12-31  
PAR Case: N  
Investigator Name: PETE FREDERICK  
Investigator Phone: (717) 772-1203 Universal Service: N  
Service class: C Contact Type: TELEPHONE  
Previous case #: Amount in Arrears: \$0.00

# Adults: 0  
# Children: 0  
Children Ages:  
Gross Income: \$0.00  
Miscellaneous Info:

Complaint Reason:  
BILLING DISPUTES (# 18)

### Customer Problem Description:

MR SWERDLOW IS DISPUTING BILL IN THE AMOUNT OF 67,713.47. MR SWERDLOW STATES THAT HIS PRIOR LANDLORD HAD HIRED A METER CO TO READ METER TO DETERMINE USAGE BECAUSE IT'S TWO BUSINESSES CONNECTED TO ONE METER. CUST NEW LANDLORD SCOTT TRAN STATES THAT HE SENT A CERTIFIED LETTER TO HIM AND THE OTHER TENANT 2 YEARS AGO INDICATING THAT SERVICE WILL NO LONGER BE IN THE LANDLORD NAME AND TO APPLY FOR SERVICE. MR SWERDLOW NEVER RECEIVED A CERTIFIED LETTER AND WAS NEVER TOLD BY LANDLORD THAT SERVICE HAD TO BE IN TENANTS NAME. MR SWERDLOW WOULD LIKE THE PUC TO FIGURE OUT WHAT HE OWES BECAUSE HIS TWO BUSINESSES ONE ACCOUNT. CUST WOULD ALSO LIKE INVESTIGATOR TO

SEE WHY PECO NEVER SEND TENANTS DOCUMENTS ON APPLYING FOR SERVICE PRIOR TO TWO MONTHS AGO. CUST HAS BEEN PAYING CURRENT CHARGES FOR BOTH UNITS.

**Company Position:**

01/03/2012 PECO IS REQUESTING CUST TO PAY 30,000 TO MAINTAIN SERVICE AND HOLDING HIM FOR A TOTAL AMOUNT OF 67,713.47

**EXHIBIT “7”**

## **BCS Decision Report**

**BCS Case #:** 002923384 **Open Date:** 2012-01-04  
**Customer Name:** RAYMOND SWERDLOW  
**Service Address:** 7015 ROOSEVELT BLVD

**PHILADELPHIA, PA 19149**  
**BCS Bill Account #:** 7260089028 **Previous Case #:**  
**Violation Type:** NO **Chapter Type:**  
**Decision Type:** W **Section / Rule:**  
**Investigator Name:** VICKY FORMAN

**Decision Issued Date:** 2012-03-12  
**Case Closed Date:** 2012-03-08

**Letter Description:**  
SHORT BLANK LETTER

<b>Total Balance:</b>	\$65705.54	<b>Balance Date:</b>	2012-01-25
<b>Amount to Restore Service:</b>	\$0.00	<b>Amount to Continue Service:</b>	\$0.00
<b>Date Payment Due:</b>		<b>Regular Budget Amount:</b>	\$0.00
<b>Special Budget Payment:</b>	\$0.00	<b>Final Bill Monthly Payment:</b>	\$0.00
<b>Plus Arrears Payment:</b>	\$0.00	<b>End of Month Payment:</b>	\$0.00
<b>Current Monthly Payment:</b>	\$0.00		
<b>Payment Terms:</b>			

**PAR Description:**

**Resolution Description:**

CASE DISMISSED. CUSTOMER RETURNED THE CALL AND IT WAS EXPLAINED TO THE CUSTOMER THAT THIS IS A COMMERCIAL ACCT AND WE HAVE LIMITED JURISDICTION. THE CURRENT BALANCE IS \$65,705.54. THE CURRENT BILL IS DUE ON 3/1/12 FOR \$2,269.53 WHICH IS THE UNPAID PORTION REMAINING ON THE BILL. THE COMPANY CAN BACK BILL FOR SERVICE BUT MUST OFFER TERMS EQUAL TO THE TIME OF BACK BILLING. THE CUSTOMER APPLIED FOR SERVICE IN PERSON. THE CONNECT WAS BACK DATED TO 4/7/09 BECAUSE THE LEASE SHOWED MR. SWERDLOW BENEFITED FROM THE SERVICE SINCE THIS TIME. A TECHNICIAN VISITED THE PROPERTY ON 1/23/12 AND OBSERVED THERE WAS A SUB-METER FOR THE FURNITURE STORE ON MR. SWERDLOW??? SERVICE. THE SUB-METER IS NOT PECO PROPERTY. IF THERE IS SOMEONE ELSE ON THE METER IT IS BETWEEN THE OWNER AND THE TENANTS. THE CUSTOMER STATED THAT EMS BILLS THE FURNITURE STORE FROM THE SUB-METER.