

Legal Department

Exelon Business Services Company
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Business Services
Company

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June 22, 2012

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

**Re: David Moore, Jr. v. PECO Energy Company
PUC Docket No. C-2012-2309932**

Dear Ms. Chiavetta:

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

___	Answer (1 original)
<u>X</u>	Answer & New Matter (1 original)
--	Motion to Dismiss (original)
___	Motion for Judgment on the Pleadings (1 original)
<u>X</u>	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**

DAVID E. MOORE	:	
Complainant	:	
v.	:	DOCKET NO. C-2012-2309932
	:	
PECO ENERGY COMPANY	:	
Respondent	:	

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 within 10 days from service of this notice, a ruling may be entered against you. Your response 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:
Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, Second Floor
Harrisburg, PA 17120

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

Dated at Philadelphia, PA, June 22, 2012



Shawane L. Lee
PECO Energy Company
2301 Market Street, S-23
Philadelphia, PA 19103
(215) 841-6481
Shawane.Lee@exeloncorp.com

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

DAVID E. MOORE	:	
Complainant	:	
v.	:	DOCKET NO. C-2012-2309932
	:	
PECO ENERGY COMPANY	:	
Respondent	:	

**PRELIMINARY OBJECTION OF RESPONDENT,
PECO ENERGY COMPANY**

Respondent, PECO Energy Company (“PECO Energy”), pursuant to 52 Pa. Code § 5.101(a)(4) respectfully petitions this Honorable Commission to dismiss the instant Complaint as legally insufficient.

1. On June 18, 2012, PECO Energy was served with a formal complaint filed by David E. Moore (hereafter “Complainant”). A copy of the Complaint is attached hereto as Exhibit “1”.

2. The Complainant alleges that PECO Energy is charging him a higher commercial rate for a residential apartment. He additionally alleges that he has tried to negotiate with PECO Energy regarding change the billing rate and associated commercial meter; however, the company will not change the commercial rate and meter to residential. See Exhibit “1”.

3. PECO Energy simultaneously filed an Answer and the instant Preliminary Objection.

4. Pursuant to 52 Pa. Code § 5.101, preliminary objections may be filed against a complaint and dismissed for legal insufficiency. 52 Pa. Code § 5.101(a)(4).

5. Commission procedure regarding the disposition of preliminary objections is similar to that utilized in Pennsylvania civil procedure.¹

6. In deciding preliminary objections, the Public Utility Commission must determine, based on the factual pleadings of the petitioner, if relief or recovery is possible.²

7. A complaint must be able to recover under the law to survive a preliminary objection.³

8. All of the non-moving party's averments must be taken as true for the sake of deciding the preliminary objection.⁴

9. The court does not, however, need to accept, "unwarranted inferences from facts, argumentative allegations, or expressions of opinions."⁵

10. Section 703 of the Public Utility Code, 66 Pa. C.S.A. § 703(b) provides that the Commission may dismiss any complaint without a hearing of, in its opinion, a hearing is not necessary to the public interest.

11. A hearing is required only when there is a disputed question of fact, and is not required to resolve questions of law. *Dee-Dee Cab, Inc. v. Pa.Pub. Util. Comm'n*,

¹ *Equitable Small Transportation Interveners v. Equitable Gas Co.*, 1994 Pa.PUC LEXIS 69, Docket No. C-00935435 (July 18, 1994)

² 2006 Pa. PUC Lexis 111, *7.

³ *Milliner v. Enck*, 709 A.2d 417, 418 (Pa. Super. Ct. 1998) ("preliminary objection should be sustained only where it appears with certainty that, upon the facts averred, the law will not allow the plaintiff to recover").

⁴ *Id.* at 7-8.

⁵ *Feingold v. McNulty*, 2009 Phila. Ct. Com. Pl LEXIS 167, *3.

817 A.2nd 593 (Pa. Commw. Ct. 2003), petition for allowance of appeal denied, 836 A.2d 123 (Pa. 2003).

12. Here, there are no genuine issues of fact and PECO Energy is entitled to judgment as a matter of law with respect to all of the allegations in the Complaint.

13. All of the allegations raised in the Complaint were previously raised by the Complainant in a prior former complaint and were dismissed.

14. The Complainant filed formal complaint docketed at C-2009-2111161. See Formal Complaint, C-2009-2111161, attached hereto as Exhibit "1".

15. On June 24, 2009, PECO Energy filed an Answer to the Complainant's Complaint. See PECO Energy Answer, attached hereto as Exhibit "2".

16. On February 5, 2010, a further hearing was held before Administrative Law Judge Charles E. Rainey, Jr. after the Complainant failed to appear for an October 29, 2009 hearing.

17. On November 29, 2010, Administrative Law Judge Dennis J. Buckley, issued an Initial Decision on November 29, 2010, dismissing the Complainant's Complaint. See Initial Decision, dated 11/29/10, attached hereto as Exhibit "3".

18. In that Decision, with regard to the Complainant's allegations of being billed at a commercial rate rather than a residential rate, ALJ Buckley stated:

The Complainant has failed to sustain his burden of proving that he has been improperly billed by PECO. Complainant owns the building at 1201 West Erie Avenue, Philadelphia, Pennsylvania. The building was previously used as a Laundromat but is currently used as an apartment building. (Findings of Fact 3-5) In 2003, Complainant realized that he was being billed at a commercial rate as opposed to a residential rate for electric service. (Finding of Fact No. 6). The Complainant claims to have contacted PECO about this, yet from December 27, 2002, to January 28, 2008, PECO was unable to gain entry to the property and so was not able to read the meter at 1201 West Erie Avenue, so no bills were issue. (Finding of Fact No. 13). However, on January 28, 2008, PECO installed an AMR. (Finding of Fact No. 14). This would seem to have been an opportunity to put right the issue with respect to what service the meter was recording but

that was not done. Thus, from January 28, 2008 forward, Complainant was billed for electric service at the commercial rate because his meter continued to measure electric service to his apartment and the lighting in common areas of 1201 West Erie Avenue. (Finding of Fact No. 15). The fact that the electric service for lighting in the public areas of the apartment building at 1201 West Erie Avenue is metered through the same meter that measures usage for Complainant's apartment explains why Complainant is billed at the commercial rate. The Complainant has failed to show that he is being billed at an improper rate.

See Exhibit "3".

19. The Pennsylvania Public Utility Commission reviewed ALJ Buckley's Initial Decision pursuant to 66 Pa. C.S. § 332(h).

20. On March 31, 2011, the Commission issued an Opinion and Order, clarifying ALJ Buckley's Initial Decision and adopted ALJ Buckley's Initial Decision. See Exhibit "4".

21. Consistent with ALJ Buckley's Decision, the Commission dismissed the Complainant's Complaint against PECO Energy. See Exhibit "4".

22. The doctrine of res judicata operates to prevent re-litigation of claims already litigated on the merits. As stated by the Commission in Frank Tomazin v. Pennsylvania-American Water Company, 1997 Pa. PUC Lexis 52 (1997), "the policies underlying the doctrine of res judicata are minimizing judicial energy devoted to individual cases, establishing certainty and respect for court judgments, and protecting the party relying on the prior adjudication from vexatious litigation."

23. The doctrine of res judicata, which is also known as claim preclusion, holds that a final judgment on the merits by a court of competent jurisdiction will bar any future action on the same cause of action between the parties and their privies. Hopewell Estates, Inc. v. Kent, 435 Pa. Superior Ct. 471. 476, 646 A.2d 1192 (1994).

24. The doctrine of res judicata applies to cases before the Commission. See, O'Toole v. Bell Telephone Co. of Pennsylvania, Inc., 77 Pa. P.U.C. 98, 104 (1992).

The doctrine of res judicata reflects the refusal of the law to tolerate the re-litigation of a matter decided by a court of competent jurisdiction. For the doctrine to prevail four conditions must be met:

- (1) Identity of issues;
- (2) Identity of causes of action;
- (3) Identity of persons and parties to the action; and
- (4) Identity of the quality and capacity of the parties suing or sued.

Day v. Volkswagenwerk Aktiengesellschaft, 318 Pa. Superior Ct. 255, 474 A.2d 1313, 1316, 1317 (1983).

25. In the present case all four elements of res judicata are met. Clearly, the parties are identical in both Complaints. The thing sued upon is identical in both Complaints. Both the current Complaint and the 2009 Complaint relate to billing at 1201 West Erie Avenue, Philadelphia, PA at a commercial rate rather than residential rate. The cause of action is identical. Finally, the quality and capacity of the parties is identical in both Complaints. The Complainant is the electric customer in both Complaints, and PECO is the public utility providing service to the Complainant.

26. The Commission entered an Order dismissing the Complainant's previous Complaint as a matter of law, with prejudice, and such dismissal prevents the re-filing of the Complaint. With his new Complaint, the Complainant has ignored the Commission's clear dismissal Order and has attempted to re-file his Complaint.

27. For purposes of determining whether res judicata applies, the essential inquiry is whether the ultimate and controlling issues have been decided in a prior proceeding where the parties had an opportunity to appear and to be heard. Stevens Painton Corp. v. First State Ins. Co., 746 A.2d 649, 654 (Pa. Super. 2000) (emphasis added). The Complainant was provided with a hearing before ALJ Charles E. Rainey, Jr., who heard the merits of his Complaint.

28. Because the present Complaint asserts the same factual and legal basis for relief as the dismissed 2009 Complaint, the Complainant is estopped from attempting to re-assert his claims here.

29. The doctrine of res judicata is meant to protect against just the type of re-litigation that the Complainant is attempting with his present formal Complaint. It is pointless and a waste of the Commission's time and resources to permit the new Complaint to go forward with respect to any issues raised in the Complaint.

30. For the reasons set forth above, all of the Complainant's claims should be dismissed on the grounds of res judicata.

REQUEST FOR RELIEF

WHEREFORE, for the reasons set forth above, PECO Energy Company respectfully requests that your Honorable Commission summarily dismiss the Complainant's Complaint, and all issues which were raised in the 2009 Complaint.

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
Shawane.Lee@exeloncorp.com

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

DAVID E. MOORE	:	
Complainant	:	
v.	:	DOCKET NO. C-2012-2309932
	:	
PECO ENERGY COMPANY	:	
Respondent	:	

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 22, 2012

Shawane L. Lee

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

DAVID E. MOORE	:	
Complainant	:	
v.	:	DOCKET NO. C-2012-2309932
	:	
PECO ENERGY COMPANY	:	
Respondent	:	

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:

David E. Moore
1201 West Erie Avenue, 1st Floor
Philadelphia, PA 19140

Dated at Philadelphia, Pennsylvania, June 22, 2012



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

C-2009-2111161

COPY

Please print in ink or type.

1. CUSTOMER (COMPLAINANT) INFORMATION

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

Name DAVID E MOORE

Street/P.O. Box 1201 W ERIE AV Apt # 1ST-R

City PHILA State PA Zip 19140

County PHILA

Daytime Telephone Number Where We Can Contact You: () 215 228 2561

E-mail Address (optional): CARHOUSE73@HOTMAIL.COM

Utility Account Number 0056358000 (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):

PHILA ELEC. CO. PECO

3. TYPE OF UTILITY (check one)

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

561739 Rev. July 2007

2009 MAY 28 AM 8:28 RECEIVED SECRETARY'S BUREAU

4. **COMPLAINT** (check one)

A. **In general, what is your complaint?**

- I want to oppose the company's proposed rate increase.
- There are incorrect charges on my bill.
- There is a reliability, safety or quality problem with my utility service.
- I received a notice that my utility service is being terminated.
- I would like a payment agreement. ✓
- Other (explain).

B. **State the facts of your complaint.**

Include any specific dates, times or places that may be important. If the complaint is about a bill, tell us about any charges that you believe are not correct. Use additional paper if you need more space. Provide copies of all relevant documents you believe will support your complaint.

5. **RELIEF**

How do you want your complaint to be resolved? Use additional paper if you need more space.

I HAVE FILED CHAPT-13, DUE TO BUSINESS FAILED, LOSS OF JOB, ETC.
#07-06454 - MARJOB, AND ALSO FOR PART-5-YRS, ASKING PECO TO CORRECT THE BILL BACK DOWN TO RESIDENTIAL NOT COMM. CHARGES, THEN A PAYMENT AGREEMENT.

9. VERIFICATION AND SIGNATURE

You must print or type your name below on the line provided for the verification paragraph, and you must sign and date (in ink) this form on the lines provided.

Verification: I DAVID E. MOORE, hereby state that the facts above set forth are true and correct (or are true and correct to the best of my knowledge, information and belief) and that I expect to be able to prove the same at a hearing held in this matter. I understand that the statements herein are made subject to the penalties of 18 Pa. C.S. § 4904 (relating to unsworn falsification to authorities).

David E. Moore (Signature) 05-26-09 (Date)

Title of authorized employee or officer

10. FILING

Please return the completed form to one of the addresses listed below:

If using U.S. Postal Service:

If using overnight delivery service:

Secretary Pennsylvania Public Utility Commission P.O. Box 3265 Harrisburg, PA 17105-3265	Secretary Pennsylvania Public Utility Commission 400 North Street Commonwealth Keystone Building, 2 nd Floor Harrisburg, Pennsylvania 17120
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Facsimiles and/or electronic filings of the complaint will not be accepted.

If you have any questions about filling out this form, please contact the Secretary's Bureau at 717-772-7777.

Keep a copy of your complaint for your records.

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

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

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

PECO ^{REQ} WOULD NOT LISTEN OR COMPROMISE ABOUT CHANGING ELEC BILL TO RESIDENTIAL CHARGE - NOTE: I DO NOT HAVE \$1,765 TO GIVE TO PECO - WRONG REAS

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 _____

Street _____

City _____ State _____ Zip _____

Area Code/Phone Number _____

E-mail Address (If Known) _____

0086

PECO
PO BOX 13778
Philadelphia, PA 19101

Account Number: 0056350000
May 12, 2009

1072 11 AM 0.357 10/22/09 10:58 AM 02144001 020000 11/25/2009
DAVID E MOORE
STE 11
1201 W ERIE AVE
PHILADELPHIA, PA 19140-4243
1 1111 1111 1111 1111 1111 1111 1111 1111 1111

For Service to:
1201 W ERIE AV
1ST FL
PHILADELPHIA, PA 19140

NOTICE OF DEPOSIT REQUEST

Dear Valued Customer:

PECO requires a deposit of \$1,765.00 for your service. Deposits are required of new customers if we cannot verify credit history and for customers who have multiple late or missed payments.

Residential Customers

The deposit is equal to two times the average monthly bill. You will be billed in three parts: 50 percent on the first bill and 25 percent on each of the next two bills. Your deposit will be returned (with interest) when your account shows 12 months of on time payments.

Non-residential Customers

The deposit is equal to your two largest monthly bills combined. Your deposit will be returned (with interest) when your account shows 36 months of on time payments.

Your deposit will not be waived once it appears on your bill. If you do not pay the deposit, your service may be shut off. If you stop or switch your service before your deposit is refunded, we will apply your deposit, plus interest, to your final balance.

PECO offers programs to help customers who are having trouble paying their bills. These include payment arrangements, budget billing plans and other programs. If you have any questions, please call 1-800-709-8685 between 7 a.m. and 6 p.m., Monday through Friday, or between 9 a.m. and 1 p.m. on Saturday. You may also visit our business office at 2301 Market Street in Philadelphia. Our business office hours are Monday through Friday, 8:30 a.m. to 5 p.m. PECO's deposit policies are available upon request.

Thank you,
PECO



EXHIBIT “2”

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

DAVID E. MOORE

v.

PECO ENERGY COMPANY

:
:
:
:
:

DOCKET NO. C-2009-2111161

**ANSWER 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. PECO Energy denies that Complainant is unable to pay his electric bill and proof thereof is demanded at time of hearing. PECO avers that Complainant has had a history of account delinquency including missed and late payments. The current account balance is \$8,293.33. Complainant's account statement is attached as Exhibit A.

By way of further reply, PECO denies that Complainant is being improperly billed at a commercial rate. Complainant's service address, 1201 W. Erie Avenue, Philadelphia Pennsylvania, is a three-unit apartment building. Complainant owns the apartment building and resides in the first floor unit. The public lighting is connected to Complainant's meter. Therefore, in accordance with PECO's Commission approved tariff, Complainant is not eligible for the residential rate.

With regards to the availability of the residential rate, PECO's tariff provides:

The term "residence service" includes service to: (a) the separate dwelling unit in an apartment house or condominium, **but not the halls, basement, or other portions of such building common to more than one such unit.**

A copy of the relevant section of PECO's tariff is attached as Exhibit B. Complainant has been advised that to be billed a residential rate; it is necessary to separate the public lighting from his apartment.

5. This paragraph is a request for relief and no answer is required.
6. PECO Energy is without sufficient information to confirm or deny this statement.
7. Admitted.

WHEREFORE, PECO Energy Company respectfully requests that your Honorable Commission dismiss the instant Complaint.

Respectfully Submitted,

Tishekia Williams
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
tishekia.williams@exeloncorp.com

FEED estimate
1

Date: 06/16/09
Page: 1 of 1

PECG Account Activity Statement

COAR038

*** Account Information ***

Account Number: 00563-58000
 Account Status: Active
 Requested By: DAVID E MOORE
 (215)715-7798 Extension:
 Mail To: DAVID E MOORE
 STE 1
 1201 W ERIE AVE
 PHILADELPHIA PA 19140

*** Current Account Status ***

Current Bill: \$2036.29 Credit Amount: \$0.00
 Billed Prior: \$6257.04 Deposit Requested: \$1765.00
 Balance Due: \$8293.33 Deposit On-Hand: \$0.00
 Service Address: Meter Bill Grp: 18
 1201 W ERIE AV Rate: Electric Commercial Service
 1ST FL PHILADELPHIA PA 19140

DATE	CHARGE TYPE	BILLING PERIOD	READ	METER #	CHARGE AMOUNT	CREDIT AMOUNT	TOTAL BILL	BALANCE FORWARD	DUE DATE	KWH	CCF	KI
03/27/08	ELECTRIC SERVICE	01/28/08 02/25/08	171	004274330	\$850.87		\$1590.87		04/18	12280		
03/27/08	ELECTRIC SERVICE	02/25/08 03/25/08	307	004274330	\$734.00		\$2067.09	\$1590.87	05/16	3440		
03/27/08	CONNECTION CHARGE - STANDARD				\$6.00		\$2260.84	\$2067.09	06/17	1080		
04/24/08	ELECTRIC SERVICE	03/25/08 04/23/08	393	004274330	\$476.22		\$2422.54	\$2260.84	07/16	800		
04/24/08	Regular Bill						\$2575.43	\$2422.54	08/18	760		
05/23/08	ELECTRIC SERVICE	04/23/08 05/22/08	420	004274330	\$193.75		\$2721.19	\$2575.43	09/16	720		
05/23/08	Regular Bill						\$2859.86	\$2721.19	10/16	680		
06/24/08	ELECTRIC SERVICE	05/23/08 06/23/08	440	004274330	\$161.70		\$3039.40	\$2859.86	11/14	1000		
06/24/08	Regular Bill						\$500.00	\$250.00				
07/25/08	ELECTRIC SERVICE	06/23/08 07/24/08	459	004274330	\$152.89		\$2667.62	\$250.00	12/15	3480		
07/25/08	Regular Bill						\$3493.96	\$2667.62	01/20	7600		
08/25/08	ELECTRIC SERVICE	07/24/08 08/24/08	477	004274330	\$145.76		\$4286.93	\$3394.04	02/19	6080		
08/25/08	Regular Bill						\$200.00					
09/24/08	ELECTRIC SERVICE	08/24/08 09/23/08	494	004274330	\$138.67		\$5023.58	\$4147.39	03/20	6880		
09/24/08	Regular Bill						\$5829.96	\$5097.18	04/20	5640		
10/23/08	ELECTRIC SERVICE	09/23/08 10/22/08	519	004274330	\$179.54		\$6257.04	\$5690.34	05/19	4360		
10/23/08	Regular Bill						\$8293.33	\$6346.82	06/18	1280		
11/06/08	Payment					\$500.00						
11/19/08	Payment					\$250.00						
11/21/08	ELECTRIC SERVICE	10/22/08 11/20/08	606	004274330	\$528.22		\$2667.62	\$2139.40	12/15	3480		
11/21/08	Regular Bill						\$3493.96	\$2667.62	01/20	7600		
12/26/08	ELECTRIC SERVICE	11/20/08 12/25/08	796	004274330	\$826.34		\$4286.93	\$3394.04	02/19	6080		
12/26/08	Regular Bill						\$5023.58	\$4147.39	03/20	6880		
01/20/09	Payment					\$150.00						
01/27/09	Late Payment Charge				\$50.08							
01/28/09	ELECTRIC SERVICE	12/25/08 01/27/09	998	004274330	\$892.89		\$4286.93	\$3394.04	02/19	6080		
01/28/09	Regular Bill						\$5023.58	\$4147.39	03/20	6880		
02/23/09	Payment					\$200.00						
02/24/09	Late Payment Charge				\$60.46							
02/26/09	ELECTRIC SERVICE	01/27/09 02/25/09	1170	004274330	\$876.19		\$5023.58	\$4147.39	03/20	6880		
02/26/09	Regular Bill						\$5829.96	\$5097.18	04/20	5640		
03/25/09	Late Payment Charge				\$73.60							
03/27/09	ELECTRIC SERVICE	02/25/09 03/26/09	1311	004274330	\$731.88		\$6257.04	\$5690.34	05/19	4360		
03/27/09	Regular Bill						\$8293.33	\$6346.82	06/18	1280		
04/14/09	Payment					\$220.00						
04/27/09	ELECTRIC SERVICE	03/26/09 04/26/09	1420	004274330	\$566.70		\$6257.04	\$5690.34	05/19	4360		
04/27/09	Late Payment Charge				\$81.28							
04/27/09	Regular Bill						\$8293.33	\$6346.82	06/18	1280		
05/12/09	DEPOSIT				\$1765.00							
05/27/09	ELECTRIC SERVICE	04/26/09 05/26/09	1452	004274330	\$181.51		\$6257.04	\$5690.34	05/19	4360		
05/27/09	Late Payment Charge				\$89.78							
05/27/09	Regular Bill						\$8293.33	\$6346.82	06/18	1280		

1500 Exhibit B

PECO Energy Company

RATE R RESIDENCE SERVICE

AVAILABILITY.

Single-phase service in the entire territory of the Company to the dwelling and appurtenances of a single private family (or to a multiple dwelling unit building consisting of two to five dwelling units, whether occupied or not), for the domestic requirements of its members when such service is supplied through one meter. Service is also available for related farm purposes when such service is supplied through one meter in conjunction with the farmhouse domestic requirements.

Each dwelling unit connected after May 10, 1980 except those dwelling units under construction or under written contract for construction as of that date must be individually metered for their basic service supply. Centrally supplied master metered heating, cooling or water heating service may be provided if such supply will result in energy conservation.

The term "residence service" includes service to: (a) the separate dwelling unit in an apartment house or condominium, but not the halls, basement, or other portions of such building common to more than one such unit; (b) the premises occupied as the living quarters of five persons or less who unite to establish a common dwelling place for their own personal comfort and convenience on a cost-sharing basis; (c) the premises owned by a church, and primarily designated or set aside for, and actually occupied and used as, the dwelling place of a priest, rabbi, pastor, rector, nun or other functioning Church Divine, and the resident associates; (d) private dwellings in which a portion of the space is used for the conduct of business by a person residing therein; (e) farm purpose uses by an individual employing the natural processes of growth for the production of grain, stock, dairy, poultry, garden truck, or other agricultural products.

The term does NOT include service to: (a) Premises institutional in character including Clubs, Fraternities, Orphanages or Homes; (b) premises defined as a rooming house or boarding house in the Municipal Code for Cities of the First Class enacted by Act of General Assembly; (c) a premises containing a residence unit but primarily devoted to a professional or other office, studio, or other gainful pursuit; (d) farms operated principally to sell, prepare, or process products produced by others, or farms using air conditioning for climatic control in conjunction with growth processes (except those customers receiving such service as of August 2, 1969); (e) electric furnaces or welding apparatus other than a transformer type "limited input" arc welder with an input not to exceed 37-1/2 amperes at 240 volts.

CURRENT CHARACTERISTICS. Standard single-phase secondary service.

MONTHLY RATE TABLE.

FIXED DISTRIBUTION SERVICE CHARGE. \$5.18

METERING AND BILLING CREDITS. A customer receiving Advanced Meter Services from a AMSP other than the Company will receive a credit on the Fixed Distribution Service Charge equal to the Total Metering Credit set forth for this Base Rate in Appendix B to the Joint Petition for Full Settlement. A customer receiving Consolidated EGS Billing will receive a credit on the Fixed Distribution Service Charge equal to the Billing and Collection Credit set forth for this Base Rate in Appendix B to the Joint Petition for Full Settlement.

VARIABLE DISTRIBUTION SERVICE CHARGE:

SUMMER MONTHS. (June through September)

4.81¢ per kWh for the first 500 kWh per dwelling unit

5.57¢ per kWh for additional kWh.

(I)

(I)

WINTER MONTHS. (October through May)

4.81¢ per kWh

(I)

COMPETITIVE TRANSITION CHARGE:

SUMMER MONTHS. (June through September)

2.92¢ per kWh for the first 500 kWh per dwelling unit

3.39¢ per kWh for additional kWh.

WINTER MONTHS. (October through May)

2.92¢ per kWh

ENERGY AND CAPACITY CHARGE:

Standard Pricing Option-The following Energy and Capacity Charges, which are not applicable to a customer who obtains Competitive Energy Supply, will apply to the customer who received Default PLR Service as of the effective date of this tariff, and continues to receive this service, or is a customer who returns to Default PLR Service and receives this service for a minimum period of twelve months or is a customer on the Company's Monthly Pricing Option and wants to return to the Standard Pricing Option and meets certain conditions described in the Monthly Pricing Option. The requirement for a minimum period of 12 months is not applicable unless the Monthly Pricing Option has been implemented by the Company. A customer returning from Competitive Default Service will not be subject to the minimum twelve month stay provision.

SUMMER MONTHS. (June through September)

6.60¢ per kWh for the first 500 kWh per dwelling unit

7.39¢ per kWh for additional kWh.

WINTER MONTHS. (October through May)

6.60¢ per kWh

Monthly Pricing Option-Upon 60 days prior written notice to the PaPUC, the Company may implement this Monthly Pricing Option, which allows customers who return to Default PLR Service to elect their service on a monthly basis. The following Energy and Capacity Charges apply to the Monthly Pricing Option.

(I) Indicates Increase

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

DAVID E. MOORE

v.

PECO ENERGY COMPANY

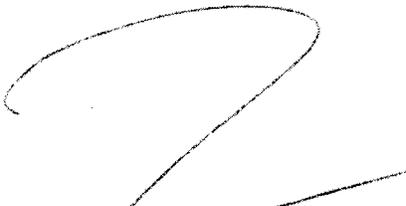
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DOCKET NO. C-2009-2111161

VERIFICATION

I, Tishekia Williams, 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 24, 2009



Tishekia Williams

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

DAVID E. MOORE

v.

PECO ENERGY COMPANY

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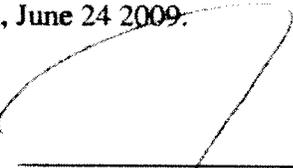
DOCKET NO. C-2009-2111161

CERTIFICATE OF SERVICE

I, Tishekia Williams, 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:

David E. Moore
1201 W. Erie Avenue
Philadelphia, PA 19140

Dated at Philadelphia, Pennsylvania, June 24 2009.



Tishekia Williams
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
Tishekia.Williams@exeloncorp.com

EXHIBIT “3”

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

David E. Moore

v.

PECO Energy Company

:
:
:
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:

C-2009-2111161

INITIAL DECISION

Before
Administrative Law Judge
Dennis J. Buckley

HISTORY OF THE PROCEEDING

This decision dismisses a formal Complaint that David E. Moore (Complainant) filed with the Pennsylvania Public Utility Commission (Commission) on May 28, 2009. Complainant averred that PECO Energy Company (PECO or Respondent) had improperly refused to change his rate from commercial to residential service despite the conversion of his business to a residence and asked that a recalculation of Complainant's electric bill be made and a payment agreement be established. Complainant also referenced his Chapter 13 bankruptcy filing in arguing inability to pay the higher commercial rate or to pay for meter conversion.

Respondent answered the Complaint on June 24, 2009. Respondent denied any improper billing as: (1) Complainant's residence is in an apartment building owned by the Complainant, and (2) Complainant's meter also measures electric service used by lighting in the public areas of the building, and so Complainant is properly billed at the commercial rate. Respondent made no answer to Complainant's assertion with respect to a Chapter 13 bankruptcy filing.

This case was assigned to ALJ Charles E. Rainey, Jr., and on August 20, 2009, ALJ Rainey issued a Prehearing Order.

A hearing was held in this matter on October 29, 2009, at which time the Complainant failed to appear. A further hearing was held on February 5, 2010, in the Philadelphia, Pennsylvania office of the Commission. Complainant, who appeared *pro se*, testified on his own behalf. PECO was represented by Mr. Ken Massey, Esq., who presented one witness, Teresa Ferrier, Regulatory Assessor, and ten exhibits (PECO Exhibits 1, 3-11), all of which were admitted into the record.

On March 25, 2010, counsel for PECO filed a letter brief as requested by ALJ Rainey setting forth PECO's position with respect to the effect, if any, of Complainant's Chapter 13 bankruptcy filing. That letter brief was served on Complainant who filed no responsive pleading. Given that no reply brief or other responsive pleading was filed by Complainant by April 14, 2010, as permitted by 52 Pa. Code § 5.502(f), the record closed on that date.

On October 18, 2010, this case was assigned to me for the preparation of an Initial Decision.

FINDINGS OF FACT

1. Complainant is David E. Moore, Jr., who resides at 1201 West Erie Avenue, Philadelphia, Pennsylvania. He owns the building at that address and has received electric service from the Respondent at that address since January, 1987. (N.T. at 6)
2. Respondent is PECO Energy Company.
3. Complainant has resided in an apartment on the first floor, rear, at 1201 West Erie Avenue since early 2002. (N.T. at 6, 10)

4. The first floor front of 1201 West Erie Avenue was originally a commercial laundromat, owned by the Complainant from circa 1992, but that business closed circa 1999. During that time, Complainant did not occupy an apartment at the address and was billed at a commercial rate. (N.T. at 6, 8, 21)

5. There are other apartments at 1201 West Erie Avenue, but all are separately metered. (N.T. at 7)

6. By 2002, Complainant was self-employed and making payments on his electric bill, but due to a period of unemployment, those payments were not consistent. (N.T. at 13)

7. In 2003, Complainant realized that he was being billed at a commercial as opposed to a residential rate for electric service. (N.T. at 10)

8. In 2005, Complainant filed for Chapter 7 bankruptcy. PECO was listed as a creditor, and PECO excused \$2,016.83 owed to PECO by the Complainant up until December 27, 2002. (N.T. at 16, 46-47, PECO Exhibit 10)

9. In 2007, Complainant filed for Chapter 13 bankruptcy in the Eastern District of Pennsylvania at Docket No. 07-16454. PECO was not listed as a creditor. Complainant makes a monthly payment of \$230 per month to a Trustee in bankruptcy. (N.T. at 17 49; PECO Exhibit 11)

10. Complainant has asked for a recalculation of his electric bill from 2003 forward. (N.T. at 15, 20)

11. When Complainant requested transfer from a commercial to a residential rate, he was told by PECO to contact an electrician in order to have a residential meter installed that would separate Complainant's apartment from the public lighting for the rest of the building. Complainant stated that he was not able to pay for meter replacement. (N.T. at 21-22)

12. At the time of the hearing in this matter, the balance of Complainant's account with PECO was \$9,726.98. (N.T. at 31)

13. Complainant was shown on PECO's records as receiving electric service for the first floor of 1201 West Erie Avenue from April 5, 1991, through December 27, 2002. From December 27, 2002 to January 28, 2008, PECO was unable to gain entry to the property, was not able to read the meter at 1201 West Erie Avenue, and no bills were issued.

14. On January 28, 2008, PECO installed an Automated Meter Reader (AMR) at 1201 West Erie Avenue, and Complainant was back-billed for service previously provided. (N.T. at 54)

15. From January 28, 2008 forward, Complainant was billed for electric service at the commercial rate (Commercial Measured Electric) because his meter measured electric service to his apartment and to the lighting in common areas of 1201 West Erie Avenue. This is claimed as an operational fact by the Complainant and is undisputed by PECO, though PECO has not performed a field check to verify this. (N.T. at 32-33; 45-46; 50-51)

16. In 2008, despite telephone calls and a letter sent to Complainant, PECO was not successful in obtaining access to the property at 1201 West Erie Avenue. (N.T. at 38-39, 40; PECO Exhibit 4)

17. In 2009, PECO sent letters and e-mails to the Complainant asking that the Complainant contact PECO with respect to the overdue account and the related formal Complaint filed with the Commission. PECO received no response from the Complainant. (N.T. 40-43, 44; PECO Exhibits 5, 6, 7)

18. On January 19, 2010, PECO sent an e-mail to the Complainant asking that the Complainant contact PECO to discuss the overdue account and the related formal Complaint filed with the Commission. PECO received no response from the Complainant. (N.T. at 43-44; PECO Exhibit 8)

19. PECO has not been able to schedule a field visit at Complainant's property to verify the information with respect to the meter and so has not been able to determine whether it is proper to switch Complainant to a residential account. (N.T. at 44)

20. The Commission's Bureau of Consumer Services (BCS) Case No. 002376164, addressed Complainant's informal complaint in this matter and stated that because public lighting is recorded on Complainant's meter, Complainant is billed at the commercial rate. (PECO Exhibit 9)

DISCUSSION

In this case, the Complainant claims improper billing by PECO and asks that the Commission establish a payment arrangement based on a recalculated bill. As the proponent of both the claim that he has been billed at the wrong rate and as the advocate for a monthly payment agreement, Complainant bears the burden of proving his entitlement to the requested relief. 66 Pa. C.S. § 332(a). This must be shown by a preponderance of the evidence, which means that the party with the burden of proof has presented evidence that is more convincing than that presented by the other party. *Samuel J. Lansberry, Inc. v. Pa. P.U.C.*, 578 A.2d 600 (1990), *alloc. den.*, 602 A.2d 863 (1992). Additionally, any finding of fact necessary to support the Commission's adjudication must be based upon substantial evidence. *Edan Transportation Corp. v. Pa. P.U.C.*, 154 Pa. Commw. 21, 623 A.2d 6 (1993); *Mill v. Pa. P.U.C.*, 67 Pa. Commw. 597, 447 A.2d 1100 (1982); 2 Pa. C.S. §704. More is required than a mere trace of evidence or a suspicion of the existence of a fact sought to be established. *Murphy v. Department of Public Welfare, White Haven Center*, 85 Pa. Commw. 23, 480 A.2d 382 (1984).

Administrative agencies, such as the Commission, are required to provide due process to the parties appearing before them. *Schneider v. Pa. P.U.C.*, 479 A.2d 10 (Pa. Cmwlth. 1984). This due process requirement is satisfied, however, when the parties are accorded notice and the opportunity to appear and be heard. *Id.* Due process has been afforded the parties in this case.

The Complainant has failed to sustain his burden of proving that he has been improperly billed by PECO. Complainant owns the building at 1201 West Erie Avenue, Philadelphia, Pennsylvania. That building was previously used as a laundromat but is currently used as an apartment building. (Findings of Fact 3-5) In 2003, Complainant realized that he was being billed at a commercial as opposed to a residential rate for electric service. (Finding of Fact No. 6) The Complainant claims to have contacted PECO about this, yet from December 27, 2002, to January 28, 2008, PECO was unable to gain entry to the property and so was not able to read the meter at 1201 West Erie Avenue, so no bills were issued. (Finding of Fact No. 13) However, on January 28, 2008, PECO installed an AMR. (Finding of Fact No. 14) This would seem to have been an opportunity to put right the issue with respect to what service the meter was recording, but that was not done. Thus, from January 28, 2008 forward, Complainant was billed for electric service at the commercial rate because his meter continued to measure electric service to his apartment and the lighting in common areas of 1201 West Erie Avenue. (Finding of Fact No. 15) The fact that the electric service for lighting in the public areas of the apartment building at 1201 West Erie Avenue is metered through the same meter that measures usage for Complainant's apartment explains why Complainant is billed at the commercial rate.¹ The Complainant has failed to show that he is being billed at an improper rate.

With respect to Complainant's request for a payment arrangement, the Commission has repeatedly held that a customer with a commercial account for public utility service does not fall within the Commission regulations at 52 Pa. Code Chapter 56 and is not entitled to a payment arrangement or other protections applicable to residential accounts under the Commission regulations at 52 Pa. Code Chapter 56. *Bio/Data Corporation v. PECO Energy Co.*, Docket No. C-20026698 (Order entered July 30, 2002); *Lebanon Valley Enterprises, Inc. v. Metropolitan Edison Co.*, Docket No. C-00015522 (Order entered October 15, 2001); *Kayla's Place Inc. v. Duquesne Light Co.*, Docket No. C-00981711 (Order entered May 24, 1999); *Kenny v. Duquesne Light Co.*, Docket No. C-00967789 (Order entered November 27, 1996); see also, 52 Pa. Code §§ 55.2(a), 56.1.

¹ As was noted at hearing, even if the residential and commercial accounts are separated by the use of different meters, Complainant would still be responsible for electric bills for lighting in the common or public areas of the building. (N.T. at 51)

PECO also argues that Complainant is not entitled to a Commission payment agreement as a result of his Chapter 13 filing and that this matter is, therefore, outside the jurisdiction of the Commission. (PECO Letter Brief of March 25, 2010, at 2) However, I believe that PECO goes too far in its analysis and conclusion. First, Complainant interposed his bankruptcy filings to demonstrate that he was in financial difficulty and unable to pay the commercial rate or to pay for a meter conversion. Second, and as PECO points out in its Letter Brief, PECO was not named as a creditor in the Chapter 13 filing, thereby giving rise to the reasonable inference that Complainant's debt to PECO (which debt was known to Complainant at the time of the Chapter 13 filing) would be dealt with outside of the bankruptcy proceeding. Finally, as the Commission cannot make a payment arrangement for a commercial account, the bankruptcy filing is, in any event, irrelevant.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the parties and the subject matter of this proceeding. 66 Pa. C.S. §§701.
2. The due process rights of Complainant have been fully protected in this proceeding. *Sentner v. Bell Telephone Company of Pennsylvania*, Docket No. F-00161106 (Order entered October 25, 1993); and 52 Pa. Code § 5.245(a).
3. Complainant has failed to meet his burden of proving that he is entitled to relief in that he has failed to prove that he is being billed at an improper rate. 66 Pa. C.S. § 332(a).
4. Commercial customers are not entitled to a payment arrangement under the Responsible Utility Customer Protection Act. 66 Pa. C.S. §§ 1403, 1405(a).
5. Commercial customers are not entitled to a payment arrangement or other protections applicable to residential accounts under the Commission regulations at 52 Pa. Code Chapter 56.

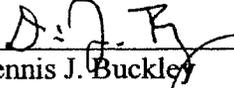
ORDER

THEREFORE,

IT IS ORDERED:

1. That the Complaint of David Moore against PECO Energy Company at Docket No. C-2009-2111161, is hereby dismissed.
2. That the record in this matter be marked closed.

Date: November 29, 2010



Dennis J. Buckley
Administrative Law Judge

EXHIBIT “4”

**PENNSYLVANIA
PUBLIC UTILITY COMMISSION
Harrisburg, PA. 17105-3265**

Public Meeting held March 31, 2011

Commissioners Present:

Robert F. Powelson, Chairman
John F. Coleman, Jr., Vice Chairman
Tyrone J. Christy
Wayne E. Gardner
James H. Cawley

David E. Moore

C-2009-2111161

v.

PECO Energy Company

OPINION AND ORDER

BY THE COMMISSION:

Before the Pennsylvania Public Utility Commission (Commission) for consideration is the Initial Decision (I.D.) of Administrative Law Judge (ALJ) Dennis J. Buckley issued on December 30, 2010. The proceeding concerned the Formal Complaint (Complaint) filed by David E. Moore (Mr. Moore or Complainant) with the Commission against PECO Energy Company (PECO). The Initial Decision dismissed the Complaint of Mr. Moore against PECO. No exceptions were filed. Pursuant to Section 332(h) of the Public Utility Code (Code), 66 Pa. C.S. § 332(h), however, we have exercised our

right to review the decision. For the reasons set forth below, we shall modify the Initial Decision.

History of the Proceeding

On May 28, 2009, Mr. Moore filed a Formal Complaint (Complaint) with the Commission against PECO in which he averred that PECO improperly refused to change his rate from commercial to residential service despite the conversion of his business to a residence. For relief, he asked that a recalculation of his electric bill be made and a payment agreement be established. The Complainant referenced his Chapter 13 bankruptcy filing in arguing inability to pay the higher commercial rate or to pay for meter conversion.

On June 24, 2009, PECO filed its Answer to the Complaint in which it denied any improper billing because: (1) the Complainant's residence is in an apartment building owned by the Complainant, and (2) the Complainant's meter also measures electric service used by lighting in the public areas of the building. PECO claimed that it properly billed the Complainant at the commercial rate. PECO did not reply to the Complainant's assertion with respect to a Chapter 13 bankruptcy filing.

A hearing was held in this matter on February 5, 2010. The Complainant appeared *pro se*, and testified on his own behalf. PECO was represented by counsel and presented one witness and ten exhibits.

A letter brief was filed by counsel for PECO on March 25, 2010. That letter brief was served on the Complainant who filed no responsive pleading. The record closed on April 14, 2010.

As stated, the Initial Decision dismissing the Complaint was issued on December 30, 2010. No exceptions have been filed.

Discussion

As the proponent of a rule or order, the Complainant in this proceeding bears the burden of proof pursuant to Section 332(a) of the Code. 66 Pa. C.S. § 332(a). To establish a sufficient case and satisfy the burden of proof, the Complainant must show that the Company is responsible or accountable for the problem described in the Complaint. *Patterson v. Bell Telephone Company of Pennsylvania*, 72 Pa. P.U.C. 196 (1990). Such a showing must be by a preponderance of the evidence. *Samuel J. Lansberry, Inc. v. Pa. PUC*, 578 A.2d 600 (Pa. Cmwlth. 1990), *alloc. denied*, 529 Pa. 654, 602 A.2d 863 (1992). That is, the Complainant's evidence must be more convincing, by even the smallest amount, than that presented by the Company. *Se-Ling Hosiery v. Margulies*, 364 Pa. 45, 70 A.2d 854 (1950). Additionally, this Commission's decision must be supported by substantial evidence in the record. 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. PUC*, 489 Pa. 109, 413 A.2d 1037 (1980).

ALJ Buckley made twenty Findings of Fact and reached five Conclusions of Law. The Findings of Fact and Conclusions of Law are incorporated herein by reference and are adopted without comment unless they are either expressly or by necessary implication rejected or modified by this Opinion and Order.

In his Initial Decision, ALJ Buckley found that the Complainant failed to sustain his burden of proving that he had been improperly billed by PECO. The Complainant owns the property at 1201 West Erie Avenue, Philadelphia, PA. The property consists of a three story building, which contains two apartments, with separate electric meters, on the upper two floors and which originally housed a laundromat on the

first floor. PECO had provided electric service to the Complainant at that address since January 1987, in the form of service to a commercial establishment. The laundromat closed around 1999. At some time between 2002 and 2008, the Complainant occupied the space in the rear of the first floor of the property and began living there. During this period, PECO was unable to gain access to the property to read the meter, had no customer of record, and was not billing anyone for service or even providing service to that portion of the building. In January 2008, PECO installed an automatic meter reading (AMR) meter to provide electric service to the first floor and common areas of the building including the hallway and general area lighting to the apartment building. PECO classified the account as commercial and billed the Complainant accordingly.

The Complainant then notified PECO that he thought he was being billed incorrectly at a commercial rate. PECO explained to the Complainant that if he would have another meter installed to cover service to the common areas, which would be rated commercial, then the service to his living area could be rated residential. The Complainant then informed PECO that he was in a bankruptcy proceeding and was unable to afford the cost of having another meter installed. As such, PECO continued to bill him at the commercial rate per its published tariff. PECO further maintained that as a commercial customer, the Complainant is not entitled to a payment arrangement.

With respect to the Complainant's request for a payment arrangement, the ALJ determined that the Commission has repeatedly held that a customer with a commercial account for public utility service does not fall within the Commission's Regulations at 52 Pa. Code Chapter 56 and is not entitled to a payment arrangement or other protections applicable to residential accounts under the Regulations.

We agree with the ALJ's disposition of the case. However, we are of the opinion that clarification with regard to a portion of the ALJ's Initial Decision is needed.

The Initial Decision points out that from December 27, 2002 to January 28, 2008, PECO was unable to gain entry to the property, was not able to read the meter at the service address, and no bills were issued.¹ This statement, while accurate, gives the impression that service was being provided but not paid for by any ratepayer. During the hearing, PECO clarified that, during this period, there was no service to the property, no customer of record and there was no billing.

Additionally, we note that part of Finding of Fact 14 in the Initial Decision is contrary to the record in this proceeding. The ALJ cites the transcript at page 54 to support this Finding of Fact. However, upon our review, this part of the transcript only supports when PECO installed the AMR device and not that PECO back-billed for service. PECO specifically testified that it did **not** back-bill for any service.² Also, the account statement supports PECO's testimony on this issue.

For the reasons set forth above, we shall modify the ALJ's Initial Decision consistent with the clarification set forth in the above discussion; **THEREFORE,**

IT IS ORDERED:

1. That the Initial Decision of Administrative Law Judge Dennis J. Buckley, issued on December 30, 2010, is adopted as modified by this Opinion and Order.

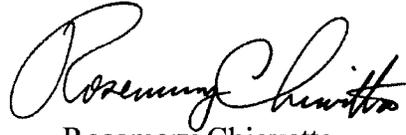
2. That the Complaint of David Moore against PECO Energy Company at Docket No. C-2009-2111161, is hereby dismissed.

¹ Finding of Fact 13 and I.D. at 6.

² Tr. at 32-33.

3. That the record in this proceeding be marked closed.

BY THE COMMISSION,

A handwritten signature in black ink, appearing to read "Rosemary Chiavetta". The signature is written in a cursive, flowing style.

Rosemary Chiavetta
Secretary

(SEAL)

ORDER ADOPTED: March 31, 2011

ORDER ENTERED: May 3, 2011