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July 16, 2012

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

RE: Gail Debrow v. PECO Energy Company
Docket No. F-2011-2270781

Dear Secretary Chiavetta:

Enclosed for filing on behalf of PECO is an original of its Exceptions filed in this matter. This document has been e-filed at the Pennsylvania Public Utility Commission's website. A copy has been served on the Complainant in accordance with the attached Certificate of Service.

If you have any questions, please feel free to contact me.

Best Regards,

STEVENS & LEE


Michael A. Grun

Encl.

cc: Gail Debrow, w/encl. (via U.S. Mail)
Cheryl Walker Davis, Director, Office of Special Assistants w/encl. (Hardcopy and CD, via U.S. Mail)

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**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

GAIL DEBROW	:	
Complainant	:	
v.	:	Docket No. F-2011-2270781
	:	
PECO ENERGY COMPANY	:	
Respondent	:	

**EXCEPTIONS OF
OF PECO ENERGY COMPANY**

Pursuant to 52 Pa Code § 5.533, PECO Energy Company (“PECO”) hereby files its Exceptions to the Initial Decision (“I.D.”) of the Administrative Law Judge (“ALJ”) in the above-referenced matter. The I.D.’s conclusion that PECO’s \$350 meter tampering fee was “unreasonable” is not supported by the evidence and directly conflicts with recent a Commission Order in a nearly identical matter wherein the \$350 fee was found to be just and reasonable.

BACKGROUND AND PROCEDURAL HISTORY

In this case, the Complainant is disputing a \$350 tampering fee that PECO assessed to her account. The Complaint alleged that the \$350 fee that PECO assessed was improper, and she claimed that she had no knowledge that the meter had ever been tampered with.

PECO filed an Answer to the Complaint on November 23, 2011. PECO’s Answer explained that the tampering fee of \$350 was property charged to the Complainant, and that it is authorized by Rule 10.4 of PECO’s Tariff.

On April 16, 2012, a hearing was held on the complaint. At the hearing, the Complainant testified on her own behalf and introduced no exhibits into the record. PECO presented the testimony of two witnesses and introduced five exhibits.

On June 26, 2012, the I.D. was issued in this matter. The I.D. found that meter tampering had taken place, but held that the \$350 tampering fee “is not based on the utility’s cost of reconnecting the service, that it is fixed arbitrarily, and that it is unreasonable”. As a result, the I.D. ordered that the Complainant is not responsible for the \$350 tampering fee.

EXCEPTION NO. 1

The ALJ’s Conclusion that PECO’s \$350 Fee is Unreasonable Is Not Based On Substantial Evidence and Directly Contradicts Clear Commission Precedent Which Held That The \$350 Fee Is Reasonable

In this case, PECO provided uncontroverted evidence that the Complainant’s meter had been tampered with. PECO also explained that its Commission-approved tariff authorizes the Company to charge customers a fee when it discovers that a meter has been tampered with. PECO Tariff Rule 10.4 states that

10.4 Tampering. In the event of the Company’s meters or other property being tampered with, the customer being supplied through such equipment shall pay the amount which the Company may estimate is due for service used but not registered on the Company’s meter, and **for any repairs or replacements required, as well as for costs of inspections, investigations, and protective installations.**

The ALJ correctly acknowledged that the Complainant’s meter had been tampered with (FoF 4), but ultimately ordered that no tampering fee should be imposed on the customer. In doing so, the ALJ concluded that PECO’s \$350 tampering fee was

“not based on the cost of reconnecting the service, is fixed arbitrarily, and is unreasonable.” (N.T. 6).

PECO respectfully submits that the ALJ’s decision to vacate the entire \$350 tampering fee is not warranted in this case, does not have any evidentiary support in the record, and conflicts with prior Commission precedent which approved PECO’s \$350 meter tampering fee as reasonable. The record in this case overwhelmingly demonstrates that the Complainant’s meter was tampered with. PECO’s witnesses testified in detail about the investigation that was performed on the Complainant’s meter. (N.T. 35-45). The investigation was initiated based on an anonymous tip from a neighbor of the Complainant’s. The investigation revealed that the shield which holds the meter in the socket was broken, that the cover rivets were missing, and that prying marks were visible on the meter cover. The PECO revenue protection representative also found that switch wires were attached to pot latch screws, meaning that the meter was bypassed: the electricity was in use but was not registered on the meter (N.T. 35-45; PECO Exhibit 3 and 5). Then, he installed new security locks to hold the meter board in place, and installed a new meter at the premises. (N.T. 44)

Based on the clear evidence of meter tampering, the Complainant was assessed PECO’s standard \$350 fee as authorized by Tariff Rule 10.4. PECO’s witness testified that this fee is based on the cost of the personnel investigating the meter tampering as well as the cost of the equipment to change the meter. (N.T., 23). PECO also provided a summary of the expenses that comprise the \$350 tampering fee. The \$350 fee assessed

by the company was justified by the cost of tools, expenses, labor, overhead, and associated taxes. (PECO Exhibit 6).¹

It is well established that a utility tariff that has been approved by the Commission has the force of law and is binding on both the utility and the utility's customers." Pennsylvania Electric Co. v. Pennsylvania Public Utility Commission, 437 A.2d 1067 (Pa. Cmwlth. 1981). Complainant has the burden of showing that the utility is responsible or accountable for the problem described in the Complaint in order to prevail. Patterson v. Bell Telephone Company of Pennsylvania, 72 Pa. PUC 196 (1990); Feinstein v. Philadelphia Suburban Water Company, 50 Pa. PUC 300 (1976). This must be shown by a preponderance of the evidence. Samuel J. Lansberry, Inc. v. PA Public Utility Comm'n, 578 A.2d 600 (Pa. Cmwlth.1990), *alloc. den.*, 529 A.2d 654, 602 A.2d 863 (1992).

To the extent that the Complainant is challenging the amount of PECO's meter tampering fee, the Complainant bears the burden of proving that PECO's tampering fee was unreasonable. The Complainant put forth no evidence whatsoever to challenge the reasonableness of the fee, and instead, the Complainant's entire case involved denying that any meter tampering had taken place. Yet, with no record support whatsoever, the ALJ unilaterally determined that PECO's \$350 tampering fee was arbitrary and unreasonable. The ALJ's basis for invalidating the fee was that "the costs of overhead (clerical and office support staff) and tools would have been incurred and paid without regard to the Complainant's tampering with the meter." (I.D., at 6). This finding by the

¹ At the time the Complaint was filed in this matter, PECO's tariff did not explicitly state a standard tampering fee amount, just the basis for calculating the fee. The currently effective tariff, however, does specify a \$350 fee for reconnection's required as a result of fraud or theft. See Supplement No. 35 to Tariff Electric Pa P.U.C. No. 4, Rule 18.7, Effective April 1, 2012. The Commission's approval of this tariff revision is further proof of the reasonableness of the \$350 tampering fee.

ALJ is not supported by any evidence in the record, and ignores the plain language of Rule 10.4 in PECO's Commission-approved tariff, which authorizes PECO to impose a tampering fee to reimburse the company for all costs associated with the tampering. The issue of whether or not PECO would have incurred certain costs independent of the Complainant's tampering was not addressed at the hearing, and has no relevance to the determination of whether or not the tampering fee is reasonable. PECO's tariff authorizes the imposition of a meter tampering fee, PECO provided ample evidence to demonstrate how the fee is calculated, and the Complainant provided no evidence to rebut PECO's calculation. The ALJ's determination that PECO's tampering fee is arbitrary and unreasonable conflicts with PECO's Commission approved tariff and is not supported by the evidence, and therefore should be rejected.

Furthermore, the ALJ's conclusion that the \$350 fee is unreasonable conflicts with clear Commission precedent on this issue. In the case of Glenn A. Jenkins v. PECO Energy Company, Docket No. C-2011-2255312 (Initial Decision dated March, 2012 Final Order entered May 16, 2012) ("Jenkins"), the Complainant attempted to argue that PECO's \$350 tampering fee was unreasonable. In its Final Order the Commission denied the Complaint and upheld the \$350 fee as reasonable and authorized by PECO's tariff. As Tariff Rule 10.4 states, the fee is based on costs actually incurred to investigate and repair the tampering. These costs will vary depending on the extent of the tampering, the investigation, and the repairs required. In the Jenkins case, the repair involved a meter replacement (see Jenkins I.D., at p. 3.) and the Commission held that the \$350 tampering fee was reasonable in that case. The repairs in the present case also involved a

meter replacement, and therefore the imposition of the identical \$350 tampering fee is justified.

The Commission also upheld PECO's meter tampering fee as reasonable in the case of Peter Ouellette v. PECO Energy Company, Docket No. F-2010-2151048 (Initial Decision issued May 13, 2012, Final Order entered August 23, 2010). In the Ouellette case, both the ALJ and the Commission determined that the Complainant had not provided any affirmative evidence to support a conclusion that the tampering fee was unreasonable, noting that it is also well established that testimony consisting of guesses, conjecture or speculation – supposition without a premise of fact – are ordinarily rejected as inadmissible and as proving nothing. Cuthbert v. City of Philadelphia, 417 Pa. 610, 209 A.2d 261 (1965); B. & K. Inc. v. Commonwealth, Department of Highways, 398 Pa. 518, 159 A.2d 206 (1960). Similarly, in the present case, the Complainant did not present any evidence to support a finding that the \$350 tampering fee was unreasonable.³ The only argument that she presented was that she supposedly did not know that the meter had been tampered with any way. (N.T., p.9). Without any affirmative evidence to support a conclusion that PECO's standard tampering fee was unreasonable, it was improper for the ALJ to conclude that PECO's fee was unreasonable or improper.

Finally, the ALJ improperly relied on an Ohio municipal court case to support his conclusions. On page 6 of the Initial Decision, ALJ analogized Ohio Power Co v. Huff, 12 Ohio Misc. 214, 231 N.E. 2d 897 (1967) to the instant case. The comparison between the present case and the Ohio Power case is inappropriate. First, Ohio municipal court rulings have no binding effect on the Pennsylvania Public Utility Commission. Second,

³ The Ouellette case involved a higher tampering fee because the repair required in that case was more extensive than just a meter replacement. As explained in the Jenkins case, costs will vary depending on the extent of the tampering, the investigation, and the repairs required. See Jenkins I.D., at p. 3.

in Ohio Power the company was seeking damages for a pole the defendant hit with his vehicle. In that case the court rationalized that it was unreasonable for overhead and administrative costs to be incorporated into the damages and determined that those costs should be excluded, because those expenses would have been paid even if the defendant did not damage the pole. By contrast, the \$350 tampering fee assessed by PECO was based on a commission-approved tariff, and is not comparable to a case where damages are being sought for a pole damaged by an automobile. The reasoning in Ohio Power for excluding overhead costs for damages is not analogous to assessing a meter tampering fee to a customer for interfering with their electricity meter. The \$350 fee is authorized by PECO's tariff and was justified by clear record evidence presented by the Company.

In short, the Complainant did not satisfy the burden of proving that the \$350 tampering fee was unreasonable. The ALJ's finding is unsupported by the evidence, is based on a flawed interpretation of PECO's tariff, and contradicts recent Commission precedent that is directly on point. As such, the I.D. should be reversed.

III. CONCLUSION

For the reasons set forth above, PECO respectfully requests that the Commission reject the I.D.'s finding that the \$350 tampering fee is "is not based on the utility's cost of providing the service, that it is fixed discriminately at pleasure, and that it is unreasonable", and dismiss the Complaint in its entirety.

Respectfully submitted,



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Dated: July 16, 2012

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

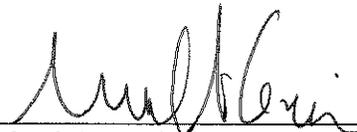
GAIL DEBROW	:	
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	:	
PECO ENERGY COMPANY	:	
Respondent	:	

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of the foregoing Exceptions upon the parties listed below, in accordance with the requirements of 52 Pa.Code §1.54 (relating to service by a party).

VIA First Class U.S. Mail

Gail Debrow
5347 Belfield Ave.
Philadelphia, PA 19144



Michael A. Gruin

DATED: July 16, 2012