

**Legal Department**

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July 23, 2012

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

**Re: Donald C. Leland, III v. PECO Energy Company**  
**PUC Docket No. F-2011-2239324**

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 X

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

<b>DONALD C. LELAND, III</b>	:	
<b>Complainant</b>	:	
<b>v.</b>	:	<b>DOCKET NO. F-2011-2239324</b>
	:	
<b>PECO ENERGY COMPANY</b>	:	
<b>Respondent</b>	:	

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**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, July 23, 2012



---

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

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

<b>DONALD C. LELAND, III</b>	:	
<b>Complainant</b>	:	
<b>v.</b>	:	<b>DOCKET NO. F-2011-2239324</b>
	:	
<b>PECO ENERGY COMPANY</b>	:	
<b>Respondent</b>	:	

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**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 an amended formal complaint filed by David E. Moore (hereafter “Complainant”). A copy of the Amended Complaint is attached hereto as Exhibit “1”.

2. Complainant alleges that he filed a formal complaint at Bureau of Consumer Services (“BCS”) Case #002624073, which “resulted in a hearing on October 8, 2010 at 1:00 p.m. in an 4<sup>th</sup> floor Hearing Room at 801 Market St., Phila., Pa.” See Amended Complaint, attached hereto as Exhibit “1”. Complainant alleges that at the hearing a PECO Energy field technician presented evidence of theft of service at the Complainant’s property located at 427 West Winona Street, Philadelphia, PA 19144. See Exhibit “1”. The Complainant is requesting that all charges and allegations related to this matter be dismissed because all of the

evidence presented at the October 8, 2010, hearing was inadmissible.

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.<sup>1</sup>

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.<sup>2</sup>

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

8. All of the non-moving party’s averments must be taken as true for the sake of deciding the preliminary objection.<sup>4</sup>

9. The court does not, however, need to accept, “unwarranted inferences from facts, argumentative allegations, or expressions of opinions.”<sup>5</sup>

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.

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

<sup>2</sup> 2006 Pa. PUC Lexis 111, \*7.

<sup>3</sup> *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”).

<sup>4</sup> *Id.* at 7-8.

<sup>5</sup> *Feingold v. McNulty*, 2009 Phila. Ct. Com. Pl LEXIS 167, \*3.

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*, 817 A.2<sup>nd</sup> 593 (Pa.Comm. 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 F-2010-2181089. See Formal Complaint, F-2010-2181089, attached hereto as Exhibit "2".

15. On July 1, 2010, PECO Energy filed an Answer to the Complainant's Complaint. See PECO Energy Answer, attached hereto as Exhibit "3".

16. On October 8, 2011, a hearing was held before Administrative Law Judge Ky Van Nguyen, who heard testimony from the Complainant and a PECO Energy representative.

17. On November 2, 2010, ALJ Nguyen, issued an Initial Decision, dismissing the Complainant's Complaint. See Initial Decision, dated 11/2/10, attached hereto as Exhibit "4".

18. In that Decision, with regard to the Complainant's allegations that PECO Energy incorrectly billed him a \$230.00 meter tampering fee, ALJ Nguyen stated:

The Complainant simply testified that he was not responsible for the electric diversions at his residence because he did not do the diversions. He does not touch electricity. He is a psychologist. Those terms, such as pot latch (potential latch), barrel lock, and line/load jumper, are too technical for him to understand. Probably, the diversions were, he suspected, acts of vandalism of his neighbors, who wanted to make the area a farmland while he wanted to build homes to keep the integrity of the neighborhood.

This testimony was of a general nature and contained only assertions. No matter how honest and strong his assertions are, they cannot form a basis for a finding in his favor. Mere bald assertions, personal opinions or perceptions do not constitute evidence. Pennsylvania Bureau of Corrections v. City of Pittsburgh, 516 Pa. 75, 532 A.2d 12 (1987).

The Respondent's Revenue Protection Technician, R. Colon, testified that he found evidence of tampering at the Complainant's residence, not once but twice. On January 29, 2009, he found that the meter had no display and that the pot latch open which caused the flow of the current not to register to the meter. He then replaced the old meter with a new one. On October 13, 2009, he found that the barrel lock on the meter was cut off, that the meter seal was missing, that one of the meter blades on the low side was taped, and that a line/load jumper was installed in the meter board. On this occasion, Mr. Colon removed the tape and the line/load jumper from the meter, installed a new side clamp, and sealed the meter. He also took a picture of the cut barrel lock and the line/load jumper.

From the testimony above, I conclude that the Complainant has not carried his burden of proof.

See Exhibit "4".

19. On January 14, 2011, the Complainant filed Exceptions to AJJ Nguyen's Initial Decision. See Complainant's Exceptions, attached hereto as Exhibit "5".

20. Because the Exceptions were filed after the Commission entered its Final Order adopting ALJ Nguyen's Initial Decision, the Commission considered the Complainant's Exceptions to be a Petition for Reconsideration.

21. The Pennsylvania Public Utility Commission dismissed the Complainant's Petition for Reconsideration and marked the matter as closed. See Opinion and Order, dated 5/5/11, attached hereto as Exhibit "6".

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 amended formal complaint and the 2010 Complaint relate to meter tampering allegations at 427 West Winona Street, Philadelphia, PA. Indeed, the Complainant states in his amended complaint that the matter being complained of concerns “a hearing on October 8, 2010, at 1:00 p.m... [where] a PECO field technician presented pictures allegedly showing evidence of theft of service at my property, i.e., 427 W. Winona Street, Philadelphia, PA 19144.” 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 Ky Van Nguyen who heard the merits of his Complaint.

28. Because the present Complaint asserts the same factual and legal basis for relief as the dismissed 2010 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 Amended Complaint, and all issues which were raised in the 2010 Complaint.

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  
Shawane.Lee@exeloncorp.com

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

<b>DONALD C. LELAND, III</b>	:	
<b>Complainant</b>	:	
<b>v.</b>	:	<b>DOCKET NO. F-2011-2239324</b>
	:	
<b>PECO ENERGY COMPANY</b>	:	
<b>Respondent</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: July 23, 2012



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Shawane L. Lee

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

<b>DONALD C. LELAND, III</b>	:	
<b>Complainant</b>	:	
v.	:	<b>DOCKET NO. F-2011-2239324</b>
	:	
<b>PECO ENERGY COMPANY</b>	:	
<b>Respondent</b>	:	

**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:

Donald Leland, III  
427 West Winona Street  
Philadelphia, PA 19144

Dated at Philadelphia, Pennsylvania, July 23, 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”**



COMMONWEALTH OF PENNSYLVANIA  
PENNSYLVANIA PUBLIC UTILITY COMMISSION  
P.O. BOX 3265, HARRISBURG, PA 17105-3265

IN REPLY PLEASE  
REFER TO OUR FILE

June 18, 2012

F-2011-2239324

PECO ENERGY COMPANY  
C/O WARD L SMITH  
ASSOCIATE GENERAL COUNSEL  
PO BOX 8699  
PHILADELPHIA PA 19101-8699

**WARD L. SMITH**  
**JUN 22 2012**

DONALD C LELAND III  
v.  
PECO ENERGY COMPANY

Dear Sir/Madam:

Attached is a copy of an amended complaint filed on behalf of the complainant in the above titled proceeding.

Such answer as you desire to make to the amended complaint should be filed in this Office and served upon the complainant within twenty days from receipt of this letter.

Very truly yours,

Rosemary Chiavetta  
Secretary

cc: ALJ  
OTS

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and - CAMP.*

**PECO ENERGY**  
**EXHIBIT 1**

11/03/2011

MH

DONALD C. LELAND III

F-2011-2239324

V

PECO ENERGY CORP.

An informal complaint (BES# 002624073) filed with P.U.C. on November 25, 2009 which resulted in a hearing on October 8, 2010, at 1:00 P.M. in an 4<sup>TH</sup> floor Hearing Room at 801 Market St., Phila., Pa.

At this hearing a PECO field technician presented pictures allegedly showing evidence of, "Theft of Service," at my property, i.e., 427 W. Winona St. Philadelphia, Pa. 19144.

The field technician verbally alluded to finding various discrepancies, at different times, with the electric meter at my property.

The field technician could not join his pictures or verbal testimony with me or my property and all alleged evidence was inadmissible. **PECO ENERGY EXHIBIT**  
I am asking for dismissal of all charges and allegations relating to this matter. Donald C. Leland

# **EXHIBIT “2”**

PENNSYLVANIA PUBLIC UTILITY COMMISSION

Formal Complaint Form

Please print or type.

1. CUSTOMER NAME (COMPLAINANT)

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

Name DONALD LELAND

Street/P.O. Box 427 W. WINONA ST. Apt # \_\_\_\_\_

City PHILADELPHIA State PA Zip 19144

County PHILADELPHIA

Area Code/HOME Phone (215) 438-8810

Area Code/WORK Phone \_\_\_\_\_

Utility Account Number 19520-00560  
(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. UTILITY NAME (RESPONDENT)

Name of utility company your complaint concerns: PECO ENERGY

3. TYPE OF UTILITY (check one)

- |  |   |
|--|---|
| <input checked="" type="checkbox"/> ELECTRIC                 | <input type="checkbox"/> STEAM HEAT   |
| <input type="checkbox"/> GAS                                 | <input type="checkbox"/> WASTE WATER  |
| <input type="checkbox"/> WATER                               | <input type="checkbox"/> MOTOR CARRIER<br>(taxi, moving company, limousine) |
| <input type="checkbox"/> TELEPHONE<br>(local, long distance) |   |

RECEIVED  
JUN -1 AM 9:32  
PA. PUBLIC  
UTILITY  
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 are 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.

*I DISAGREE WITH THE ALLEGATIONS SUBMITTED TO ME IN RE, METER CONDITIONS AND CONTINUANCE OF EVIDENCE COMPILED AGAINST ME BY PERSONS NOT DIRECTLY REPRESENTATIVES OF PELD ENERGY.*

5. RELIEF

What do you want the Public Utility Commission to do about your complaint? Use additional paper if you need more space.

*VACATE ALL CHARGES, FEES AND OBLIGATIONS DIRECTED TOWARD ME.*

6. PROTECTION FROM ABUSE

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

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

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.

8. 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, DONALD LELAND, 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).

Donald Leland  
(Signature)

5/24/10  
(Date)

**9. LEGAL REPRESENTATION (IF ANY)**

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

Lawyer's Name \_\_\_\_\_

Street \_\_\_\_\_

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

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

**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	Secretary Pennsylvania Public Utility Commission 400 North Street Commonwealth Keystone Building, 2 <sup>nd</sup> Floor Harrisburg, Pennsylvania 17120
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**Facsimiles and/or electronic filings of the complaint form 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.**

**EXHIBIT “3”**

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**DONALD LELAND** :  
 :  
**v.** : **DOCKET NO. F- 2010-2181089**  
 :  
**PECO ENERGY COMPANY** :

**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 there are incorrect charges on Complainant's account. Complainant was engaged in unauthorized use of services and meter tampering. Accordingly, a meter tampering fee of \$230.00 was assessed to his account. PECO denies that fee is improper.

On January 29, 2009, PECO's Revenue Protection department discovered theft of service at Complainant's property. Specifically, the field technician found an open pot latch. In response, the field technician removed electric meter number 105505582, removal reading index 54625, and installed electric meter number 030615904, set reading index 00000.

On July 22, 2009, another revenue protection investigation as initiated after the company received reports of meter abnormalities. A field investigation revealed that the barrel lock on the meter was cut and a line/load jumper was installed in the meter board, thus bypassing the meter.

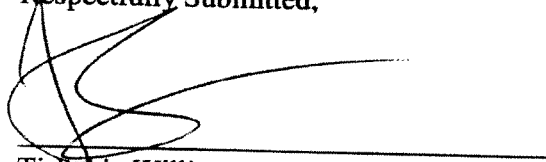
Finally, on October 13, 2009, the Revenue Protection department initiated another investigated for possible theft of service. On this occasion, the field technician found the barrel lock on the meter was cut and a line/load jumper was installed in the meter board, thus bypassing the meter. The field technician removed the line/load jumper from the meter, installed a new side clamp and sealed the meter. The field technician captured the cut barrel lock and line/load jumper with a photograph.

To cover the cost of the time and materials used in correcting the diversions, a Revenue Protection fee, in the amount of \$230.00, was assessed to the customer's account. PECO denies that the fee is improper.

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,



Tishkia 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  
tishkia.williams@exeloncorp.com

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**DONALD LELAND**

**v.**

**PECO ENERGY COMPANY**

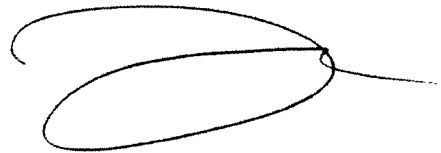
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**DOCKET NO. F- 2010-2181089**

**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: July 1, 2010



---

Tishekia Williams

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**DONALD LELAND**

v.

**PECO ENERGY COMPANY**

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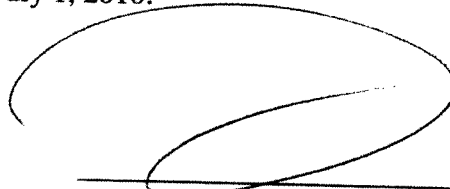
**DOCKET NO. F- 2010-2181089**

**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:

Donald LeLand  
427 W. Winona Street  
Philadelphia, PA 19144

Dated at Philadelphia, Pennsylvania, July 1, 2010.



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 “4”**

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Donald LeLand

v.

PECO Energy Company

:  
:  
:  
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:

F-2010-2181089

**INITIAL DECISION**

Before  
Ky Van Nguyen  
Administrative Law Judge

**HISTORY OF THE PROCEEDINGS**

On June 1, 2010, Donald LeLand (Complainant) filed a complaint with the Pennsylvania Public Utility Commission (Commission) against PECO Energy Company (Respondent). In the complaint, the Complainant essentially stated that he was not responsible for the meter being tampered with and that all the information of electric diversions was collected by unreliable persons who have nothing to do with the Respondent's business. He asked that the Commission investigate the Respondent's practice.

On July 1, 2010, the Respondent filed an answer to the complaint. The Respondent stated that on January 29, 2009, the Complainant's electric meter was replaced because his old meter was tampered with and that on July 22 and October 13, 2009, it found the Complainant's meter was again tampered with. It further stated that it assessed a meter tampering fee of \$230 to the Complainant to cover the cost of the time and materials used in correcting the diversions.

**PECO ENERGY  
EXHIBIT 4**

On October 8, 2010, a hearing was held on the complaint. The Complainant proceeded unrepresented. He testified on his own behalf and introduced no exhibits into the record. The Respondent was represented by Tishekia Williams, Esquire, who presented the testimony of one witness and introduced two exhibits into the record.

The record closed at the conclusion of the hearing on October 8, 2010.

### FINDINGS OF FACT

1. The Complainant is a residential customer of the Respondent and takes service at 427 W. Winona Street, Philadelphia, Pennsylvania (N.T. 4, 5).
2. When receiving a signal from the Complainant's meter indicating that the meter did not work, on January 29, 2009, the Respondent dispatched a Revenue Protection Technician, Mr. Ralph Colon, to the Complainant's home. Mr. Colon found that the Complainant had a digital meter but that the meter had no display on the screen. He further found the pot latch (the potential latch) in the meter open, which caused the flow of the current not to be registered on the meter. Mr. Colon replaced the old meter with a new one (N.T. 17-19, 21, 22; PECO Exhibit 1).
3. When receiving a report from a vendor indicating that the Complainant's meter had a problem, on October 13, 2009, the Respondent dispatched a Revenue Protection Technician, Mr. Ralph Colon again, to the Complainant's home. Mr. Colon found that the barrel lock on the meter was cut off, that a line/load jumper was installed in the meter board, thus bypassing the meter. He also found that one of the meter blades on the low side was covered with tape preventing the flow of the current not to register to the meter. He then removed the tape and the line/load jumper from the meter and installed a new side cap over the barrel lock. He also took the picture of the cut barrel lock and the line/load jumper (19-21, 22; PECO Exhibit 2).

4. When a meter is not registering, it sends a signal to the Respondent's Department of Revenue Projection for this department to investigate. The department also send out its technician to investigate when it receives a report from its vendor. Vendor is the Respondent's agency whose duty is to investigate the operation of meters (N.T. 21-23).

5. The Respondent assessed the Complainant a fee of \$230 to cover the cost of the time and materials used in correcting the electric diversions.

### DISCUSSION

Section 332(a) of the Public Utility Code, 66 Pa. C.S. §332(a),<sup>1</sup> provides that the party seeking relief from the Commission has the "burden of proof." "Burden of proof" is a duty to establish a fact by a "preponderance of the evidence." The term "preponderance of the evidence" means that one party has presented evidence which is more convincing, by even the smallest amount, than the evidence presented by the other party. Se-Ling Hosiery v. Margulies, 364 Pa. 54, 70 A.2d 854 (1950). In other words, "preponderance" is not dependent on the number of witnesses testifying on either side but rather on the credibility of the testimony in the light of all the evidence in a case. Burch v. Reading Co., 240 F.2d 574 (3d Cir. 1957) cert. denied, 353 U.S. 965 (1957). The Pennsylvania Supreme Court has characterized a preponderance of the evidence as tantamount to a "more likely than not" inquiry. Commonwealth v. \$6,425 Seized From Esquilin, 583 Pa. 544, 555, 880 A.2d 523, 524 (2005).

Under these principles the Complainant has the burden of proving by a preponderance of the evidence that the Respondent was responsible for the problem described in his complaint.

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<sup>1</sup> Section 332(a) of the Public Utility Code provides:

"(a) Burden of Proof. – Except as may be otherwise provided in section 315 (relating to burden of proof) or other provisions of this part or other relevant statute, the proponent of a rule or order has the burden of proof."

The Complainant simply testified that he was not responsible for the electric diversions at his residence because he did not do the diversions. He does not touch electricity. He is a psychologist. Those terms, such as pot latch (potential latch), barrel lock, and line/load jumper, are too technical for him to understand. Probably, the diversions were, he suspected, acts of vandalism of his neighbors, who wanted to make the area a farmland while he wanted to build homes to keep the integrity of the neighborhood (N.T. 9-12).

This testimony was of a general nature and contained only assertions. No matter how honest and strong his assertions are, they cannot form a basis for a finding in his favor. Mere bald assertions, personal opinions or perceptions do not constitute evidence. Pennsylvania Bureau of Corrections v. City of Pittsburgh, 516 Pa. 75, 532 A.2d 12 (1987).

The Respondent's Revenue Protection Technician, R. Colon, testified that he found evidence of tampering at the Complainant's residence, not once but twice.<sup>2</sup> On January 29, 2009, he found that the meter had no display and that the pot latch open which caused the flow of the current not to register to the meter. He then replaced the old meter with a new one. On October 13, 2009, he found that the barrel lock on the meter was cut off, that the meter seal was missing, that one of the meter blades on the low side was taped, and that a line/load jumper was installed in the meter board. On this occasion, Mr. Colon removed the tape and the line/load jumper from the meter, installed a new side clamp, and sealed the meter. He also took a picture of the cut barrel lock and the line/load jumper.

From the testimony above, I conclude that the Complainant has not carried his burden of proof.

#### CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the parties and the subject matter of this complaint.

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<sup>2</sup> In its answer to the complaint, the Respondent alleged a third incident of meter tampering which occurred on July 22, 2009. But the Respondent did not testify to this incident. See the Respondent's Answer.

2. The Complainant has failed to carry his burden of proof.


ORDER

THEREFORE

IT IS ORDERED:

1. That the complaint of Donald LeLand against PECO Energy Company at Docket No. F-2010-2181089 is denied for his failure to carry his burden of proof.
2. That the record at Docket No. F-2010-2181089 be marked closed.

Date: November 2, 2010

  
\_\_\_\_\_  
KY VAN NGUYEN  
Administrative Law Judge

**EXHIBIT “5”**



COMMONWEALTH OF PENNSYLVANIA  
PENNSYLVANIA PUBLIC UTILITY COMMISSION  
P.O. BOX 3265, HARRISBURG, PA 17105-3265

P200 exhibit  
2

IN REPLY PLEASE  
REFER TO OUR FILE

April 11, 2011

**TISHEKIA WILLIAMS**

**APR 14 2011**

TISHEKIA E WILLIAMS ESQUIRE  
EXELON BUSINESS SERVICES COMPANY  
2301 MARKET STREET/S23-1  
P O BOX 8699  
PHILADELPHIA PA 19101-8699

Re: F-2010-2181089, Donald LeLand v. Peco Energy Company

Dear Ms. Williams:

On January 14, 2011, Donald LeLand filed Exceptions to the (Recommended or Initial) Decision of Administrative Law Judge Ky Van Nguyen the above captioned matter. Our review of the filing revealed that no certificate of service or other indication that the parties of record to the case were served with the Exceptions. Therefore, we have enclosed a copy of the Exceptions for your review. This shall constitute service of the Exceptions for purposes of 52 Pa. Code §5.533.

Pursuant to 52 Pa. Code §5.535, you shall have (10) days from the above date served to file Reply Exceptions. Although the Exceptions were timely filed, due to the failure of Donald LeLand to provide service on all the parties of record to the case, and in order to avoid prejudice to any party, we shall deem the filing date of the Exceptions to be the above date served for purposes of Section 332(h) of the Public Utility Code, 66 Pa. C.S. §332(h), relating to the time for the Commission to consider the Exceptions.

Sincerely,

Rosemary Chiavetta  
Secretary

Enclosure

cc: All Parties of Record  
Office of Special Assistants  
Document Folder

**PECO ENERGY**  
**EXHIBIT 5**

RECEIVED  
2011 JAN 14 AM 9:41  
PA. P.U.C.  
SECRETARY'S BUREAU

Commonwealth of Pennsylvania  
Pa. Public Utility Commis  
P.O. Box 3265  
Harrisburg, Pa. 17105-326

To whom it may concern: F-2010-2181089

I am DONALD C. LELAND III  
427 W. WINONA ST.  
PHILADELPHIA, PA. 19144-4507

In reference to my complaint to P.U.C. I am in disagreement with the decision of the Honorable Administrative Judge, Ky Van Nguyen. I was instructed to await written notification that the decision may become final. I received a current bill from PECO and have yet to receive any other notification.

In his decision Judge Nguyen seems to base his findings on the evidence presented by a PECO Respondent, represented by Tishkia Williams, Esquire. The evidence, in total, was dis-allowed. I am being asked to defend a position that has failed to exist as viable or at least connected to me

**EXHIBIT “6”**

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

Public Meeting held May 5, 2011

**Commissioners Present:**

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

Donald LeLand

F-2010-2181089

v.

PECO Energy Company

**OPINION AND ORDER**

**BY THE COMMISSION:**

Before the Pennsylvania Public Utility Commission (Commission) for consideration and disposition is a Petition for Reconsideration (Petition) filed by Donald LeLand (Complainant) on January 14, 2011,<sup>1</sup> to the Commission's Final Order, entered on January 7, 2011, that adopted the Initial Decision (I.D.) of Administrative Law Judge (ALJ) Ky Van Nguyen in this proceeding.

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<sup>1</sup> The Complainant filed a letter in disagreement with the ALJ's I.D. We shall consider the Complainant's letter as a Petition for Reconsideration since it was filed after the Commission entered its Final Order adopting the Administrative Law Judge's Initial Decision in this proceeding.

## History of the Proceeding

On June 1, 2010, the Complainant filed a Formal Complaint (Complaint) with the Commission against PECO Energy Company (PECO or Respondent). In the Complaint, the Complainant stated that he was not responsible for the tampering associated with his electric meter his electric meter and that all the information of electric diversions was collected by unreliable persons who have nothing to do with the Respondent's business. The Complainant asked that the Commission investigate the Respondent's practice. I.D. at 1.

On July 1, 2010, PECO filed an answer to the Complaint stating that on January 29, 2009, it replaced the Complainant's electric meter because of tampering that occurred with the Complainant's old meter. PECO also indicated that on July 22 and October 13, 2009, the Complainant's meter again showed signs of tampering. PECO stated that it assessed a meter tampering fee of \$230 to the Complainant to cover the cost of the time and materials used in correcting the diversions. I.D. at 1.

On October 8, 2010, a hearing was held on the Complaint before ALJ Nguyen. The Complainant appeared *pro se*, testified on his own behalf, and introduced no exhibits into the record. PECO was represented by counsel, presented the testimony of one witness and introduced two exhibits, which were admitted into the record. The record closed at the conclusion of the hearing on October 8, 2010. I.D. at 2.

In his Initial Decision, issued on November 18, 2010, ALJ Nguyen denied the Complaint due to the Complainant's failure to carry his burden of proof. By Final Order entered on January 7, 2011, the Commission adopted the ALJ's Initial Decision without further action. On January 14, 2011, the Complainant filed a letter in disagreement with the ALJ's I.D.

## Background

During the hearing, the Complainant testified that he was not responsible for the electric diversions created at his residence. The Complainant claimed that he does not touch electricity and that the electric diversions were probably acts of vandalism caused by his neighbors, who wanted to make the area a farmland while he wanted to build homes to keep the integrity of the neighborhood. I.D. at 4; Tr. at 9-12.

PECO's witness R. Colon, a Revenue Protection Technician, testified that he found evidence of tampering with the Complainant's meter twice,<sup>2</sup> on January 29, 2009, and again on October 13, 2009. On the first tampering, Mr. Colon testified that the pot latch on the meter was opened causing the flow of current not to register to the Complainant's meter. A new meter, therefore, was installed. On the October 13 tampering, Mr. Colon testified that he found that the barrel lock on the meter was cut off, the meter seal was missing, one of the meter blades was taped, and a line/load jumper was installed in the meter board. On this occasion, Mr. Colon removed the tape and the line/load jumper from the meter, installed a new side clamp, and sealed the meter. Mr. Colon took a picture of the cut barrel lock and the line/load jumper. I.D. at 4.

Based on this evidence, ALJ Nguyen concluded that the Complaint should be denied because the Complainant did not meet his burden of proof. I.D. at 4.

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<sup>2</sup> In its Answer to the Complaint, PECO alleged a third incident of meter tampering occurred on July 22, 2009. PECO did not testify to this incident. *See* Respondent's Answer.

## Discussion

The ALJ made five Findings of Fact and reached two 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.

The Public Utility Code (Code) establishes a party's right to seek relief following the issuance of our final decisions pursuant to Subsections 703(f) and (g), 66 Pa. C.S. §§ 703(f) and 703(g), relating to rehearings, as well as the rescission and amendment of orders. Such requests for relief must be consistent with Section 5.572 of our Regulations, 52 Pa. Code § 5.572, relating to petitions for relief following the issuance of a final decision. Section 5.572(a), 52 Pa. Code § 5.572(a) provides that:

Petitions for rehearing, reargument, reconsideration, clarification, rescission, amendment, supersedeas or the like shall be in writing and shall specify, in numbered paragraphs, the findings or orders involved, and the points relied upon by petitioner, with appropriate record references and specific requests for findings or orders desired.

The standards for granting a Petition for Reconsideration or Modification were set forth in *Duick v. Pennsylvania Gas and Water Company*, 56 Pa. PUC 553, 1982 Pa. P.U.C. LEXIS 4 (1982). *Duick* held that a petition for rehearing under Subsection 703(f) of the Code must allege newly discovered evidence not discoverable through the exercise of due diligence prior to the close of the record. *Duick* at 558. A petition for reconsideration under Subsection 703(g), however, may properly raise any matter designed to convince us that we should exercise our discretion to amend or rescind a prior order, in whole, or in part. Furthermore, such petitions are likely to succeed only when they raise "new and novel arguments" not previously heard or considerations which appear to have been overlooked or not addressed. *Duick* at 559. A petition seeking

reopening of the record (more properly one for rehearing) may be entertained as a petition for reconsideration, under the provisions of 66 Pa C.S. § 703(g), if the newly discovered evidence was not in existence, or was not discoverable through the exercise of due diligence, prior to the expiration of the time within which to file a petition for rehearing, under the provisions of 66 Pa C.S. § 703(f). *Id.*

In his Petition, the Complainant states that he disagrees with the ALJ's Initial Decision. Initially, the Complainant appears to aver that he did not receive any notification regarding the ALJ's issuance of an I.D. or of the Final Order. Additionally, the Complainant suggests that the ALJ based his findings on the evidence presented by PECO's witness and that the evidence in total was disallowed. The Complainant requests that PECO's charges to him be dismissed. Petition at 1-2.

On review of the Petition, we find that it fails to meet the standards to modify or rescind a Commission Order that are set forth in *Duick, supra*. The Complainant's claim that it did not receive notification of the Initial Decision or of the Final Order in this proceeding are not supported by the record. The Commission's records indicate that the Complainant was served with the Final Order and the Initial Decision, as well as accompanying instructions regarding the Commission's procedure for filing Exceptions to the Initial Decision.

Other than his general disagreement with the ALJ's decision and the evidence which the ALJ properly relied upon, the Complainant has not presented any "new and novel arguments" that the Commission has not previously heard and addressed. As such, we shall deny the Complainant's Petition for Reconsideration.

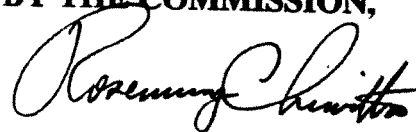
**Conclusion**

Based on the above discussion, we shall deny the Complainant's Petition;  
**THEREFORE,**

**IT IS ORDERED:**

1. That the Petition for Reconsideration filed on January 7, 2011, by Donald LeLand to Administrative Law Judge Ky Van Nguyen's Initial Decision, is hereby denied.
2. That this proceeding shall be marked closed.

**BY THE COMMISSION,**



Rosemary Chiavetta  
Secretary

(SEAL)

ORDER ADOPTED: May 5, 2011

ORDER ENTERED: May 9, 2011