

Exelon Business Services Company
2301 Market Street/523-1
P.O. Box 8699
Philadelphia, PA 19101-8699

Direct Dial: 215.841.6841

August 20, 2012

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

Re: Melissa Randall v. PECO Energy Company
PUC Docket No. F-2012-2319299

Dear Ms. Chiavetta:

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

| | |
|----------|---|
| — | Answer (1 original) |
| — | Answer & New Matter (1 original) |
| — | Motion to Dismiss (original) |
| — | 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/lo

Enc.

Scheduling Recommendation: Call of the docket ___ Non Call of the docket X

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

| | | |
|----------------------------|---|----------------------------------|
| MELISSA RANDALL | : | |
| Complainant | : | |
| v. | : | DOCKET NO. F-2012-2319299 |
| | : | |
| 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, August 20, 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**

| | | |
|----------------------------|---|----------------------------------|
| MELISSA RANDALL | : | |
| Complainant | : | |
| v. | : | DOCKET NO. F-2012-2319299 |
| | : | |
| PECO ENERGY COMPANY | : | |
| Respondent | : | |

**AMENDED 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 August 15, 2012, PECO Energy was served with a formal complaint filed by Melissa Randall (hereafter “Complainant”). A copy of the Formal Complaint is attached hereto as Exhibit “1”.

2. Complainant alleges that she needs “a payment agreement that is workable.” She claims that PECO and the PUC “have not accurately recorded all [her] payments since 2009. Also some of these charges are older than 4 years old”. She alleges that “PECO has asked for a previous arrangement that asked that [she] pay \$72.07 plus current charges. [She] complied with that.” She alleges that she does “not feel that [she] was given a fair hearing by ALJ Jones because she would not hear any of [her] evidence except gross income.” She claims she was not “allowed to present evidence that I have mentioned in A1. I was not allowed to question PECO’s counsel.” 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.

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.

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.2nd 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 two prior former complaints that have been adjudicated.

14. Specifically, the Complainant filed a Complaint at docket number F-2008-2065525, where she requested a more affordable payment agreement. See Formal Complaint at docket number F-2008-2065525, attached hereto as Exhibit "2".

15. The Complainant had a telephonic hearing for this matter on February 23, 2009, before Administrative Law Judge Cynthia Williams Fordam. At the hearing, the Complainant presented testimony in support of her case.

16. On June 16, 2008, ALJ Fordham rendered a decision dismissing the Complaint, pursuant to 66 Pa. C.S. § 1405(d). See ALJ Fordham's Initial Decision, attached hereto as Exhibit "3". The Complainant filed exceptions to ALJ Fordham's Decision on July 16, 2009.

17. On March 11, 2010, the Commission issued an Opinion and Order, granting the Complainant payment agreement terms to pay her balance within six months. A copy of the Order and Opinion is attached hereto as Exhibit "4".

18. The Complainant filed a second formal complaint docketed at C-2011-2219901. See Formal Complaint, C-2011-2219901, attached hereto as Exhibit "5".

19. On January 31, 2011, PECO Energy filed an Answer to the Complainant's Complaint. See PECO Energy Answer, attached hereto as Exhibit "6".

20. In PECO Energy's Answer it raised the affirmative defense of Res Judicata, stating that the Complainant had filed another formal complaint at docket number F-2008-2065525, and had a telephonic hearing on February 23, 2009, before Administrative Law Judge Cynthia Williams Fordam. See PECO Energy's Answer, attached hereto as Exhibit "6". PECO Energy also averred that the Complainant had not pled a change in household income.

21. On September 19, 2011, the issues raised in the formal complaint were heard before Administrative Law Judge Angela Jones at a telephonic hearing but were limited in scope to the Complainant's household income.

22. On December 14, 2011, ALJ Jones recommended dismissal of the Complaint pursuant to 66 Pa. C.S. § 1405(d) and for failure of the Complainant to carry her burden of proof. See Initial Decision of ALJ Jones, attached hereto as Exhibit "7".

23. The Complainant filed Exceptions to ALJ Jones' Initial Decision.

24. On March 15, 2012, the Pennsylvania Public Utility Commission ("Commission") adopted ALJ Jones' Initial Decision and dismissed the formal complaint against PECO Energy. See Commission Opinion and Order, dated 3/15/12, attached hereto as Exhibit "8".

25. The Commission marked the matter as closed. See Exhibit "8".

26. 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."

27. 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).

28. 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).

29. 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 formal complaint and the 2008 and 2011 Complaints relate to requests for a payment agreement and alleged utility charges over four years old for the service address 416 East State Street, Media, PA 19063 under account number 83224-01611. Indeed, the Complainant states in her current *complaint she does “not feel that [she] was given a fair hearing by ALJ Jones because she would not hear any of [her] evidence except gross income.” She claims she was not “allowed to present evidence that I have mentioned in A1. I was not allowed to question PECO’s counsel.”* The cause of action is identical. Finally, the quality and capacity of the

parties is identical in all three Complaints. The Complainant is the electric customer in both Complaints, and PECO is the public utility providing service to the Complainant.

30. 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 her new Complaint, the Complainant has ignored the Commission's clear dismissal Order and has attempted to re-file her Complaint to get a better decision concerning her payment agreement.

31. 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 Fordham and ALJ Angela Jones. Both Judges heard the merits of her Complaint. Both decided she is not entitled to a payment agreement on her balance pursuant to 66 Pa. C.S. § 1405(d). Despite ALJ Fordham's ruling, the Commission granted the Complainant a six month payment agreement on her balance. When the Complainant raised the issue again in her second formal complaint, the Commission adopted ALJ Jones' decision and dismissed her Complaint pursuant to 66 Pa. C.S. § 1405(d).

32. Simply because the Complainant does not like the terms of the six month payment agreement, it does not give her the right to re-litigate this matter.

33. Because the present Complaint asserts the same factual and legal basis for relief as the 2008 Complaint granting a six month payment agreement; and the dismissed 2011 Complaint, the Complainant is estopped from attempting to re-assert her claims here.

34. 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.

35. 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 Formal Complaint, and all issues which were raised in the 2011 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**

| | | |
|----------------------------|---|----------------------------------|
| MELISSA RANDALL | : | |
| Complainant | : | |
| v. | : | DOCKET NO. F-2012-2319299 |
| | : | |
| 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: August 20, 2012

Shawane L. Lee

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

| | | |
|----------------------------|---|----------------------------------|
| MELISSA RANDALL | : | |
| Complainant | : | |
| v. | : | DOCKET NO. F-2012-2319299 |
| | : | |
| 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:

Melissa Randall
416 East State Street
Media, PA 19063

Dated at Philadelphia, Pennsylvania, August 20, 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

Please print or type.

1. CUSTOMER NAME (COMPLAINANT)

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

Name Melissa Randall
Street/P.O. Box 416 E. State St. Apt.# _____
City Media State PA Zip 19063
County Delaware
Area Code/HOME Phone 610-891-6544
Area Code/WORK Phone N/A
Utility Account Number 83224-0161
(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

3. TYPE OF UTILITY (check one)

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

RECEIVED
AUG 2 2012
PA PUBLIC UTILITY COMMISSION
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).

I need a payment agreement that is workable - I cannot pay the arrangement that is required - I would be forced to file bankruptcy

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.

PECO and the PUC have not accurately recorded all my payments since 2009. Also some of these charges are older than 4 years old. PECO has asked for a previous arrangement, that asked that I pay \$72.07 plus current charges. I complied with that. In the summer of ^{see} A1.

5. RELIEF

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

I am willing to put down a reasonable deposit \$1000 - \$2500 and then pay \$200 - \$250 per month plus my monthly charges. Right now PECO, without any written notification has told me verbally over the phone - that my service will be terminated 8/11/12. which is on a weekend and according to your regulations can't take place.

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.

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) _____

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, Melissa Randall, 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).

Melissa Randall (Signature) 8-1-12 (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 |
|---|--|

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.

A1. 2010 or 2011 PECO gave me a zero bill. When I inquired about this matter I was told that they were using a deposit - I questioned several representatives at length and was told twice that I owed nothing. I followed their direction not to send any payment.

The amount of documentation that I can provide is in excess of 200 pages, that the commission should still have in their possession. It includes PECO bills, PUC documents, medical records and financial documents. I will provide this and any other documentation ~~when~~ needed when I am assigned a docket number.

A2 I require a telephonic hearing due to many health restrictions. These include Stage 3 Rectal Cancer, Stroke, Seizure. I must be steps from a bathroom due to complications of chemotherapy.

A3. I will not be available on the following dates 11/19 - 22 of 2012.

A4. I also do not feel that I was given a fair hearing by ALJ Jones because she would not hear any of my evidence except gross income. I was not
→

allowed to present evidence that I have
mentioned in A1. I was also not allowed
to question PECO's counsel.

Exhibit “2”

Must be returned by September 29, 2008

PENNSYLVANIA PUBLIC UTILITY COMMISSION

Formal Complaint Form

Please print or type.

1. CUSTOMER NAME (COMPLAINANT) F-2008-2065525

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

Name Melissa Randall

Street/P.O. Box 416 East State Street Apt # _____

City Media State PA Zip 19063

County Delaware

Area Code/HOME Phone 610-891-6544

Area Code/WORK Phone same

Utility Account Number 83224-01611
(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)

ELECTRIC

STEAM HEAT

GAS

WASTE WATER

WATER

MOTOR CARRIER

(taxi, moving company, limousine)

TELEPHONE
(local, long distance)

PA. PUBLIC UTILITIES COMMISSION
SECRETARY'S BUREAU

2008 SEP 19 AM 8:15

RECEIVED

B# 19053

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. I would like a more affordable payment arrangement.
(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 have repeatedly asked for payment arrangements with PECO. I can't afford over \$600 per month at this time. I can afford the budget payment of \$241 per month but not the additional \$300 plus to pay off my past due balance. I have told both PECO and the PUC this. I definitely cannot afford right now as I am suffering from Stage 3 Cancer.

5. RELIEF

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

I am more than willing to pay the budget payment, but if we could work out a payment plan that would add an additional \$50-\$75 to go towards the unpaid balance for year one and then increase it the following year to \$75-\$125. The next year \$150-\$200. I have a lot of extra expense due to my illness. I have had to make payment arrangements with everybody. My landlord, car payments water company, credit card companies. All other utilities and creditors have been very cooperative. I'm asking the same from PECO and the PUC.

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 Melissa Randall, 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).

Melissa Randall (Signature) 9-18-08 (Date)

I am requesting a telephone hearing due to the fact that I am a Stage 3 Cancer patient, undergoing Chemotherapy treatments at the Lankenau Hospital Cancer Center. It is extremely difficult and next to impossible for me to travel.

I receive treatment and have physician appointments on Tuesdays and Friday each week. I ask that my hearing be scheduled for Monday, Wednesday or Friday between 9am and 5pm. The only date that I know of that I will be completely unavailable on is 12/2/08.

Exhibit “3”

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

| | | |
|---------------------|---|----------------|
| Melissa Randall | : | |
| | : | |
| v. | : | F-2008-2065525 |
| | : | |
| PECO Energy Company | : | |

INITIAL DECISION

Before
Cynthia Williams Fordham
Administrative Law Judge

HISTORY OF THE PROCEEDING

On September 19, 2008, Melissa Randall (“Randall” or “Complainant”) filed a formal complaint with the Pennsylvania Public Utility Commission (“Commission”) against PECO Energy Company (“PECO” or the “Respondent”) alleging, among other things: that she would like a more affordable payment arrangement; that she cannot afford to pay over \$600.00 a month; that she is suffering from stage 3 cancer; and that she can afford to pay the budget of \$241.00 a month but not the additional amount due on the past due balance.

On October 16, 2008, the Respondent filed an Answer. The Respondent denied that the Complainant is unable to pay her bills. The Respondent averred that the Complainant’s account balance is \$9,386.72. The Respondent referred to the Bureau of Consumer Services (“BCS”) decision, dated August 14, 2008, which required the Complainant to pay a budget of \$241.00 plus \$382.00 on the arrearage for a total of \$623.00. The Respondent noted that the Complainant failed to keep the payment arrangements that it provided in April 2007 and May 2008. The Respondent stated that based on the financial information that the Complainant supplied, she does not qualify for the Customer Assistance Program.

A telephonic hearing was held in this matter on February 23, 2009, with Administrative Law Judge Cynthia Williams Fordham as the presiding officer. The Complainant, Melissa Randall, testified in support of the complaint and sponsored four exhibits - Complainant's Exhibit 1 – the 2008 W-2 form for Brian Randall; Complainant's Exhibit 2 –two 2008 W-2 forms for William Randall and one for Andrew Randall; Complainant's Exhibit 3 – a 2008 W-2 form for Andrew Randall; and Complainant's Exhibit 4 – List of Monthly Expenses for the Complainant's Household with copies of bills attached. Michael S. Swerling, Esquire, represented PECO Energy Company. The Respondent presented one witness, Teresa Ferrier, a regulatory assessor for the Respondent, who sponsored five exhibits - PECO Exhibit 1 - Account Statement for service from January 2007 through January 2009; PECO Exhibit 2 - Payment Arrangement History; PECO Exhibit 3 - four Bureau of Consumer Services decisions dated March 12, 2003; PECO Exhibit 4 - Bankruptcy Information; and PECO Exhibit 5 – Returned Check History.

During the hearing, the Respondent's counsel requested that the Complainant submit copies of the receipts for medical co-payments (Tr. 23, 53). The record was held open for the Complainant to submit the additional exhibit, which was marked Complainant's Exhibit 5 (Tr. 53-55).

By correspondence, dated February 25, 2009, the Complainant submitted copies of her physician co-payments. The documents were received on March 3, 2009. Complainant's Exhibit 5 consists of a cover letter and copies of physician co-payments and a bill for brakes for the Complainant's vehicle.

The Respondent did not object to the admission of Complainant Exhibit 5. Therefore, in the Order dated March 19, 2009, Complainant Exhibit 5 was entered into evidence as a late filed exhibit pursuant to 52 Pa. Code §5.404 (a)

The record in this case consists of a 59-page transcript and ten exhibits. The record in this case closed on March 19, 2009.

FINDINGS OF FACT

1. The Complainant is Melissa Randall, 416 East State Street, Media, PA 19063.
2. The Respondent in this proceeding is PECO Energy Company.
3. The Complainant, her husband and her sons shared a house with the Complainant's mother until the mother's death in 2002 (Tr. 9).
4. Although the Complainant's mother was responsible for paying the PECO bill and the mortgage, the Complainant found out that the mother had not been paying the bills (Tr. 9, 10).
5. After the mother's death in 2002, the Complainant and her family were forced to sell the house. They did not receive any money from the sale of the house (Tr. 10).
6. The Complainant's family moved into a rental property at 308 East Front Street after the sale (Tr. 10).
7. The Complainant's family was forced to move from the Front Street property because the landlord declared bankruptcy (Tr. 10).
8. The Complainant, her husband and her two sons moved to the State Street property in 2004 (Tr. 10).
9. The Complainant has a residential account for electric and gas service with the Respondent (Tr. 37; PECO Ex. 1).

10. The Complainant initiated service at the current address in September 2004 (Tr. 35).

11. The Complainant's husband, Brian Randall, works for Weston Solutions, Inc. In 2008, his gross annual income was \$78,412.48 (Tr. 12, 13, 16; C. Ex. 1).

12. Andrew A. Randall is the Complainant's 21 year old son. In 2008, he earned \$1,645.75 at Weston Solutions, Inc. and \$1,895.39 at Acme Markets (Tr. 13, 16; C. Ex. 2, 3).

13. William Randall is the Complainant's 20 year old son and her caregiver. He in 2008 he earned \$2,482.64 at Finfree Enterprises, Inc., and \$11,108.00 at Quotations LLP (Tr. 12, 13, 15, 16; C. Ex. 2).

14. The Complainant worked briefly in 2004. She is unable to work because she has cancer, asthma, rheumatoid arthritis, fibromyalgia and Meniere's disease (Tr. 7, 30, 32).

15. The monthly expenses for the Randall household include food, rent, water and sewer bills, doctor co-payments, medication co-payments, medical parking, medical expenses not covered by insurance (Tr. 17, 23; C. Ex. 4, C. Ex. 5).

16. The monthly expenses for the Randall household also include, among other things, a cable, phone and internet bundle, cell phone bill, veterinarian care, pet food, and pet grooming (Tr. 17, 19, 20, 23-26; C. Ex. 4).

17. The Complainant and her husband filed Chapter 7 bankruptcy on October 16, 2005 (Tr. 33, 36; PECO Ex. 4).

18. In response to the Complainant's bankruptcy filing, the Respondent designated the account as the pre-petition account and established a post-petition account in October 2005 (Tr. 36; PECO Ex. 4).

19. The pre-petition bankruptcy account in the amount of \$4,142.77 was charged off on May 22, 2006. Therefore, the Complainant is not responsible for paying this amount (Tr. 36; PECO Ex. 4).

18. The Complainant made three valid payments in 2006. The following payments were made: \$445.00 on March 31, 2006; \$60.00 on April 10, 2006; and \$100.00 on April 14, 2006 (Tr. 36, 37; PECO Ex. 1).

19. In 2006, five of the Complainant's checks were returned for insufficient funds. In 2007, six of the Complainant's checks were returned for insufficient funds (Tr. 38, 39; PECO Ex. 5).

20. The Complainant made one valid payment in 2008. The payment in the amount of \$227.00 was made on May 30, 2008 by credit card (Tr. 20, 27, 28; PECO Ex. 1).

21. The Complainant had five payment arrangements (Tr. 41, 42; PECO Ex. 2, 3).

22. The Bureau of Consumer Services decision, dated February 19, 2004, required the Complainant to pay her budget bill of \$150.00 plus \$100.00 a month on the account balance (Tr. 44; PECO Ex. 2, 3).

23. In 2004, the Complainant's household's gross monthly income was \$5,900.00. There were two adults and two children in the household (Tr. 45).

24. On October 27, 2004, the Respondent gave the Complainant a payment arrangement which required her to pay \$100.00 plus the current bill (Tr. 43; PECO Ex. 2).

25. On March 30, 2007, the Respondent gave the Complainant a payment arrangement which required her to pay \$394.84 plus the current bill (Tr. 43; PECO Ex. 2).

26. On April 28, 2008, the Respondent gave the Complainant a payment arrangement which required her to pay \$352.63 plus the current bill (Tr. 43; PECO Ex. 2).

27. The Bureau of Consumer Services (“BCS”) decision, dated August 14, 2008, required the Complainant to pay a budget of \$241.00 plus \$382.00 on the arrearage for a total of \$623.00 (Tr. 46; PECO Ex. 2, 3).

28. In August 2008, the Complainant’s household gross monthly income was \$4,500 and there were three adults and one child in the household (Tr. 46).

29. The Complainant did not keep any of the payment arrangements (Tr. 7, 8, 48; PECO Ex. 2, 3).

30. Based on the income information provided by the Complainant for the hearing, the total annual household income is \$95,554.21. The household monthly gross income is \$7,962.85. The Complainant’s husband’s monthly gross income is \$6,534.37 (Tr. 46; C. Ex. 1, 2, 3).

32. After the Respondent receives two returned checks, the policy is to require payment by cash, certified check or money order (Tr. 47).

33. The Respondent accepts debit or credit card payments (Tr. 47).

34. The Respondent sent a termination notice to the Complainant on July 23, 2007 (Tr. 39, 40).

35. To prevent the termination, on August 2, 2007, the Complainant requested a payment arrangement. A medical certificate was submitted on August 21, 2007 (Tr. 39, 40).

36. The Respondent sent a termination notice to the Complainant on September 14, 2007 (Tr. 40).

37. To prevent the termination, the Complainant sent the Respondent a check in the amount of \$5,501. The check was received on September 26, 2007. That check was returned for insufficient funds (Tr. 40; PECO Ex. 5).

38. The Respondent sent a termination notice to the Complainant on October 2, 2007 (Tr. 40, 41).

39. To prevent the termination, on October 3, 2007, the Complainant requested a payment arrangement. The Complainant gave the Respondent a check in the amount of \$5,670.80 on October 15, 2007. That check was returned for insufficient funds (Tr. 41; PECO Ex. 5).

40. The Respondent sent a termination notice to the Complainant on March 31, 2008 (Tr. 41).

41. To prevent the termination, on April 9, 2008, the Complainant requested a CAP Rate application (Tr. 41).

42. The Respondent sent a termination notice to the Complainant on June 24, 2008 (Tr. 41).

43. To prevent the termination, a medical certificate was submitted. It was approved on July 16, 2008 (Tr. 41).

44. At the time of the hearing, the Complainant's balance was \$10,770.61 (Tr. 38; PECO Ex. 1).

DISCUSSION

Pursuant to Section 332(a) of the Public Utility Code, 66 Pa. C.S. §332(a), the burden of proof is on the proponent of a rule or order. In this proceeding, the Complainant is the

proponent of a rule or order. Therefore, the Complainant bears the burden of proving by a preponderance of the evidence that the Respondent has violated the Public Utility Code or a regulation or order of the Commission. Se-Ling Hosiery v. Margulies, 364 Pa. 45, 70 A.2d 854 (1950). The Complainant must show that the utility is responsible or accountable for the problem described in the complaint. Feinstein v. Philadelphia Suburban Water Company, 50 Pa. P.U.C. 300 (1976).

The record in this proceeding must be reviewed to determine whether the Complainant has satisfied her burden of proof. If the burden of proof has been satisfied, then it must be determined whether the Respondent has submitted evidence of “co-equal” value or weight to refute the Complainant’s evidence. If this has occurred, the burden of proof has not been satisfied, unless the Complainant presented additional evidence. Morrissey v. Pa. Dept. of Highways, 424 Pa. 87, 225 A.2d 895 (1967).

In addition to determining whether the Complainant has satisfied her burden of proof, care must be exercised to insure that the Commission’s decision is supported by substantial evidence. 2 Pa. C.S. §704. The term “substantial evidence” has been defined by various Pennsylvania courts as such relevant evidence that a reasonable mind might accept as adequate to support a conclusion. Substantial evidence is more than a mere trace of evidence or a suspicion of the existence of a fact sought to be established. Norfolk & Western Ry. Co. v. Pa. P.U.C., 489 Pa.109, 413 A. 2d 1037 (1980); Murphy v. Dept. of Public Welfare, 85 Pa. Commonwealth Court 23, 480 A.2d 382 (1984).

The Complainant testified that her husband is the sole breadwinner (Tr. 7; C. Ex. 1). She has not worked since 2004. She is an artist (Tr. 7).

In addition to suffering from cancer, the Complainant stated that she has asthma, rheumatoid arthritis, fibromyalgia and Meniere’s disease. Her husband is a diabetic and her oldest son has juvenile rheumatoid arthritis. Her medication co-pays and her medical co-pays are outrageously high (Tr. 7). Since she has undergone treatment and surgery, she has modified

her diet greatly, and that is more expensive (Tr. 8). She said that she has to buy medical supplies that are not covered by her insurance (Tr. 8).

She reviewed her monthly expenses (C. Ex. 4). According to Complainant's Exhibit 4, the household monthly expenses are \$4,312.00 (C. Ex. 4). The Complainant said that although her cable bill seems high, before she signed the contract with Comcast, she was paying more to Verizon for her phone and internet service (Tr. 8). She testified that her oldest son was scheduled to graduate in May 2009 and probably will not be living at home. She has a parent Plus loan for him. Her youngest son is working up to 70 to 80 hours a week to save money to go to culinary school since he could not get loans to cover his tuition (Tr. 8).

The Complainant testified that she cannot afford to pay the amount requested in the August 2008 Bureau of Consumer Services Decision. She said that she can pay \$241.00 plus an extra \$50.00 a month for a total of \$291.00 (Tr. 9).

Pursuant to Chapter 14, the Commission must follow certain guidelines when establishing payment arrangements.

§1405. Payment agreements.

(a) General rule. The Commission is authorized to investigate complaints regarding payment disputes between a public utility, applicants and customers. The Commission is authorized to establish payment agreements between a public utility customers and applicants within the limits established by this chapter.

(b) Length of payment agreements. The length of time for a customer to resolve an unpaid balance on an account that is subject to a payment agreement that is investigated by the Commission and is entered into by a public utility and a customer shall not extend beyond:

(1) Five years for customers with a gross monthly household income level not exceeding 150% of the federal poverty level.

(2) Two years for customers with a gross monthly household income level exceeding 150% and not more than 250% of the federal poverty level.

(3) One year for customers with a gross monthly household income level not exceeding 250% of the federal poverty level and not more than 300% of the federal poverty level.

(4) Six months for customers with a gross monthly household income level 300% of the federal poverty level.

. . .

(d) Number of payment agreements. Absent a change in income, the Commission shall not establish or order a public utility to establish a second or subsequent payment agreement if a customer has defaulted on a previous payment agreement. A public utility may, at its discretion, enter into a second or subsequent payment agreement with a customer.

The record in this matter indicates that the Complainant failed to comply with the payment arrangements established by the Respondent and BCS. There is no evidence that the Complainant's family has less income than they had when the Bureau of Consumer Services' decisions were rendered. In the Order reconsidering the Implementation Order, the Commission said, that "we find that § 1405(d) does not divorce the Commission from its traditional and fundamental role as final arbiter of utility consumers' rights with respect to payment agreement issues. Rather, §1405(d) permits the establishment of one payment agreement by the Commission, subject to the requirements and limitations of §1405." Chapter 14 Implementation, Reconsideration Of Implementation Order, Docket No. M-00041802F0002 (Order Entered October 31, 2005). Furthermore, the Commission concluded that §1405(d) permits the Commission (in addition to instances where there has been a change of income) to establish one payment agreement that meets the terms of Chapter 14 before the prohibition against a second payment agreement in §1405(d) applies. Consequently, the Commission cannot establish or order a public utility to establish a second or subsequent payment arrangement since the Complainant has defaulted on a BCS decision. Lisa Brown v. PECO Energy, Docket No. Z-01512168 (Order entered May 13, 2005) (Complainant defaulted on February 2004 BCS decision).

The Complainant's household monthly gross income is \$7,962.85. The Complainant's husband's monthly gross income is \$6,534.37 (Tr. 46; C. Ex. 1, 2, 3). The record shows that the current household income is a level four. Gross monthly income that exceeds \$5,514.00 for four people is a level four on the income guidelines. This is more than 300 percent of the poverty level. If the Commission were in a position to set a payment arrangement, the Complainant would be required to pay the outstanding balance in six months. However, Chapter 14 gives the public utility the discretion to make a payment arrangement when the Complainant has defaulted on a prior arrangement.

The Complainant has failed to sustain her burden of proving that she has cannot afford to pay the Respondent. The household income exceeds the expenses. In addition, the Complainant has not complied with payment arrangements in the past. There is no evidence in the record to show that the household income has been reduced. Thus, the Commission cannot give her another payment arrangement. Nevertheless, she can accept the offer that the Respondent made during the hearing. Consequently, the complaint is dismissed.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the parties and subject matter in this proceeding. 66 Pa. C.S. §701.
2. That the Complainant has the burden of proof in this matter pursuant to 66 Pa. C.S. §332(a).
3. That Chapter 14 precludes the Commission from establishing a second or subsequent payment arrangement for customers who have defaulted on a payment agreement unless there their income has changed. 66 Pa. C.S. §1405(d), Lisa Brown v. PECO Energy Company, Docket No. Z-01512168 (Order entered May 13, 2005).

ORDER

THEREFORE,

IT IS ORDERED:

1. That the complaint filed by Melissa Randall against the PECO Energy Company at Docket F-2008-2065525 is dismissed.
2. That the record in this case is marked closed.

Date: June 16, 2009

Cynthia Williams Fordham
Administrative Law Judge

Exhibit “4”

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

Public Meeting held March 11, 2010

Commissioners Present:

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

Melissa Randall

Docket No. F-2008-2065525

v.

PECO Energy Company

OPINION AND ORDER

BY THE COMMISSION:

Before the Pennsylvania Public Utility Commission (Commission) for consideration and disposition are the Exceptions¹ of Melissa Randall (Complainant) filed July 16, 2009, to the Initial Decision (I.D.) of Administrative Law Judge (ALJ) Cynthia Williams Fordham, which was issued on July 6, 2009. PECO Energy Company (PECO) did not file Reply Exceptions.

¹ Since there was no certificate of service filed with the Exceptions, the Secretary of the Commission sent a copy of the Exceptions to counsel for PECO Energy Company on July 22, 2009.

History of the Proceeding

On September 19, 2008, the Complainant filed a Formal Complaint with the Commission against PECO, wherein she alleged an inability to pay the amount requested for residential electric service from PECO. She requested a more affordable payment plan. This Complaint is a timely appeal of a decision of the Commission's Bureau of Consumer Services (BCS) at BCS Case No. 2430655 (August 25, 2008).

On October 16, 2008, PECO filed an Answer that denied the Complainant's alleged inability to pay the current budget bill of \$241.00 per month, plus \$382.00 per month, toward arrearages. The Complainant's overdue balance, when that payment arrangement was made, was \$9,150.82.

On February 23, 2009, a telephonic hearing was held before the ALJ. The Complainant testified *pro se* and sponsored four exhibits, which were admitted into the record. PECO was represented by counsel and presented the testimony of one witness who sponsored five exhibits, which were admitted into the record.

On July 6, 2009, the Commission issued ALJ Fordham's Initial Decision in which she recommended that the Complaint be denied.

As noted, on July 16, 2009, the Complainant filed Exceptions to the Initial Decision. PECO did not file Reply Exceptions.

Discussion

We note that any issue or Exception, which we do not specifically address herein, has been duly considered and will be denied without further discussion. It is well settled that we are not required to consider expressly or at length each contention or

argument raised by the parties. *Wheeling & Lake Erie Railway Co. v. Pa. PUC*, 778 A.2d 785, 794 (Pa. Cmwlth. 2001), also *see, generally, University of Pennsylvania v. Pa. PUC*, 485 A.2d 1217 (Pa. Cmwlth. 1984).

In addition to the foregoing, Section 332(a) of the Public Utility Code (Code), 66 Pa. C.S. § 332(a), provides that the party seeking a rule or order from the Commission has the burden of proof in that proceeding. It is axiomatic that “[a] litigant’s burden of proof before administrative tribunals as well as before most civil proceedings is satisfied by establishing a preponderance of evidence which is substantial and legally credible.” *Samuel J. Lansberry, Inc. v. Pa. PUC*, 578 A.2d 600, 602 (Pa. Cmwlth. 1990). The term “preponderance of the evidence” means that one party has presented evidence that is more convincing, by even the smallest amount, than the evidence presented by the other party. *Se-ling Hosiery v. Margulies*, 364 Pa. 45. 70 A.2d 854 (1950).

While the burden of persuasion may shift back and forth during a proceeding, the burden of proof never shifts. The burden of proof always remains on the party seeking affirmative relief from the Commission. *Milkie v. Pennsylvania Public Utility Commission*, 768 A.2d 1217 (Pa. Cmwlth. 2001). The Complainant, as the party seeking relief, has the burden of proof. In this dispute, the Complainant must show that the utility is responsible or accountable for the problem described in the Complaint, *Feinstein v. Philadelphia Suburban Water Company*, 50 Pa. P.U.C. 300 (1976), or that the utility has violated either its duty under the Public Utility Code or the orders or regulations of the Commission. 66 Pa. C.S. § 701.

The ALJ made forty-four Findings of Fact and reached three 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 Complainant is a residential customer of PECO. Her household consists of two adults and two adult children. Since 2005, the Complainant made only four valid payments to PECO. Tr. at 19-20. The Complainant made three valid payments in 2006, no valid payments in 2007, and one valid payment in 2008. Tr. at 36-37. In 2006, five of the Complainant's checks were returned for insufficient funds. In 2007, six of the Complainant's checks were returned for insufficient funds. Findings of Fact No. 19. On August 25, 2008, BCS' decision was issued in this case. The ALJ determined that the Complainant's household income amounted to a Level 4 on the income guidelines, which is more than 300 percent of the poverty level. Pursuant to Chapter 14, the Complainant would be required to pay the outstanding balance in six months. In this case, BCS directed the Complainant to pay the current budget bill of \$241.00 per month, plus \$382.00 per month toward arrearages, beginning with the September 2008 due date. Findings of Fact No. 27; PECO Ex. 2, 3.

PECO averred that it has made reasonable efforts to assist the Complainant in making her monthly payments. Since 2004, PECO has established five payment agreements with the Complainant. Findings of Fact Nos. 22, 24, 25, 26, 27. The Complainant did not comply with any of the payment arrangements. Tr. at 7, 8, 48.

However the Complainant manages her household budget, she is required to pay PECO for the electric service consumed. By law, a public utility is entitled to receive payment for the service it provides. *Scaccia v. West Penn Power Company*, 55 Pa. P.U.C. 637 (1982). Otherwise, unpaid bills are included in the utility's uncollectible expenses, which all of its remaining customers must pay. *Bolt v. Duquesne Light Company*, Docket No. Z-8712758 (Order entered April 8, 1988). No public utility may receive a greater or lesser rate than the one set forth in its tariff on file with this Commission. 66 Pa. C.S. §1303. Neither may a public utility unreasonably discriminate for or against a particular customer by establishing a special rate for them. 66 Pa. C.S. §1304.

With regard to the Complainant's allegation that she cannot pay the utility bills as requested, any decision thereon must be consistent with the provisions of the *Responsible Utility Customer Protection Act* (Act 201). Act 201, which became effective on December 14, 2004, enacted Chapter 14 of the Public Utility Code (Code), 66 Pa. C.S. §§1401, *et seq.* This legislation directs how the Commission must establish this payment arrangement.

Section 1403 of the Code, 66 Pa. C.S. §1403, defines "Payment Agreement" as:

An agreement whereby a customer who admits liability for billed service is permitted to amortize or pay the unpaid balance of the account in one or more payments.

We note that the Complainant does not dispute any of the amount owed for the electric service. Section 1405 of the Code, 66 Pa. C.S. §1405, regarding payment arrangements, reads in pertinent part:

(b) LENGTH OF PAYMENT AGREEMENTS. The length of time for a customer to resolve an unpaid balance on an account that is subject to a payment agreement that is investigated by the commission and is entered into by a public utility and a customer shall not extend beyond:

(1) Five years for customers with a gross monthly household income level not exceeding 150% of the Federal poverty level.

(2) Two years for customers with a gross monthly household income level exceeding 150% and not more than 250% of the Federal poverty level.

(3) One year for customers with a gross monthly household income level exceeding 250% of the Federal

poverty level and not more than 300% of the Federal poverty level.

(4) Six months for customers with a gross monthly household income level exceeding 300% of the Federal poverty level.

. . .

(d) Number of payment agreements. Absent a change in income, the Commission shall not establish or order a public utility to establish a second or subsequent payment agreement if a customer has defaulted on a previous payment agreement. A public utility may, at its discretion, enter into a second or subsequent payment agreement with a customer.

The Complainant verified her monthly gross household income to be \$7,962.85 (the Complainant's husband's monthly gross income is \$6,534.37 with the rest contributed by the adult children). Tr. at 46; Complainant Ex. 1, 2, 3. A household consisting of two adults and two children with a combined monthly gross income of \$7,962.85 exceeds the 300 percent poverty level threshold. Therefore, the Complainant, pursuant to 66 Pa. C.S. §1405(b), must pay off the arrearage on this account within six months.

The Complainant's Exceptions consist of one type-written sheet. Therein, she relates evidence of events that have occurred that have allegedly changed the income contributed by the adult children in the household.

A review of the Complainant's account history is instructive. On March 1, 2006, the Complainant was discharged from a Chapter 7 bankruptcy proceeding that she filed in 2005. On May 22, 2006, PECO wrote off her pre-petition account balance of \$4,142.77. PECO Exh. 4. Following the write-off of her \$4,142.77 account balance, the Complainant made only three valid payments to PECO in 2006, totaling \$605. Also, in 2006, five of the Complainant's checks were returned for insufficient funds.

In 2007, six of the Complainant's checks were returned for insufficient funds, including checks for \$5,501, \$5,501, and \$5,671, that were sent after PECO sent termination notices to the Complainant. The Complainant made no valid payments on her account in 2007. PECO Exh. 1.

The Complainant made only one valid payment to PECO in 2008, which was a payment of \$277 by credit card on May 30, 2008. This was, in fact, the only valid payment that the Complainant made on her gas and electric bills between May 2006 and January 2009. NT at 37. By the date of the hearing on February 23, 2009, the Complainant's account balance had increased to \$10,770.61, or \$1,620 higher than the Complainant's arrearage when BCS issued the decision in August 2008 that is the subject of this appeal.

The Complainant has been given four previous payment arrangements and has not complied with any of them. In addition to the payment arrangement issued by BCS in August 2008, BCS issued a payment arrangement to the Complainant in February 2004, requiring her to pay her budget bill of \$150 plus \$100 on her arrearage. PECO subsequently granted payment arrangements to the Complainant in October 2004, March 2007, and April 2008. Since 2007, PECO has issued at least five termination notices to the Complainant. The Complainant has managed to avoid termination each time, either by submitting checks that were returned for insufficient funds, or through the use of the Commission's medical certification procedures.

The ALJ dismissed the Complaint based on a conclusion that, absent a significant change in income, Chapter 14 bars the Commission from issuing a payment arrangement in this case due to the February 2004 payment arrangement issued by BCS. We disagree. Section 1405(d) of the Public Utility Code, 66 Pa. C.S. § 1405(d), limits the Commission's ability to establish more than one payment arrangement for a customer

(absent a change in income as defined by Chapter 14). However, Chapter 14 went into effect on December 14, 2004, approximately ten months after BCS established the February 2004 payment arrangement for the Complainant. A reasonable interpretation of Section 1405(d) is that a pre-Chapter 14 payment arrangement does not prohibit the Commission from establishing a payment arrangement pursuant to Chapter 14 before the prohibition in Section 1405(d) applies.

Because the Commission does have the authority to issue a payment arrangement in these circumstances, BCS had the authority to issue a payment arrangement to the Complainant in 2008. The terms of the BCS payment arrangement were timely appealed, and thus are subject to our review. Based on the Complainant's household income, the payment arrangement issued by BCS was not consistent with Chapter 14 and should be amended so as to require the Complainant to pay her arrearage within six months. Section 1405(b)(4) of the Public Utility Code, 66 Pa. C.S. §1405(b)(4), requires that Commission-issued payment arrangements retire unpaid balances within six months when a customer's gross household income is more than 300% of the Federal poverty level. In reaching this conclusion, we recognize that the monthly payment required of the Complainant is going to increase substantially. Given her extremely poor payment history detailed above, and her relatively high household income, we believe that this result is appropriate.

We will deny the Complainant's Exceptions. In the Exceptions, the Complainant is inappropriately attempting to introduce new evidence after the close of the record. The record in this matter is closed, and we will not consider any Exceptions that seek to introduce new facts into the record. 52 Pa. Code § 5.431(b). Also, the maximum length of a payment arrangement for the lowest income category under Chapter 14 is 60 months. Based on the Complainants' \$10,770 arrearage in February 2009, we would be unable, under any circumstances, to establish the payment arrangement of budget plus \$50-\$75 as sought by the Complainant.

Conclusion

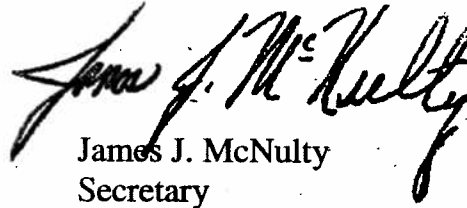
Based upon the foregoing discussion, we shall deny the Complainant's Exceptions and modify the ALJ's Initial Decision consistent with the foregoing discussion; **THEREFORE,**

IT IS ORDERED:

1. That the Exceptions of Melissa Randall to the Initial Decision of Administrative Law Judge Cynthia Williams Fordham are denied.
2. That the Initial Decision of Administrative Law Judge Cynthia Williams Fordham is modified, consistent with this Opinion and Order.
3. That the payment arrangement issued by the Bureau of Consumer Services is amended to require Melissa Randall to pay off the arrearage for electric and gas service in six months, pursuant to 66 Pa. C.S. §1405(b).
4. That the Formal Complaint of Melissa Randall against PECO Energy Company is dismissed.

5. That this proceeding be marked closed.

BY THE COMMISSION,



James J. McNulty
Secretary

(SEAL)

ORDER ADOPTED: March 11, 2010

ORDER ENTERED: **April 5, 2010**

Exhibit “5”

PENNSYLVANIA PUBLIC UTILITY COMMISSION

Formal Complaint Form

Please print in ink or type.

1. CUSTOMER (COMPLAINANT) INFORMATION

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

Name Melissa Randall

Street/P.O. Box 416 East State Street Apt # _____

City Media State PA Zip 19063

County Delaware

Daytime Telephone Number Where We Can Contact You: (610) 891-6544

E-mail Address (optional): _____

Utility Account Number 832240611
(from your bill)

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

Name _____

Street/P.O. Box _____

City _____ State _____ Zip _____

2. FULL NAME OF UTILITY COMPANY (RESPONDENT):

PECO

3. TYPE OF UTILITY (check one)

ELECTRIC

GAS

WATER

TELEPHONE
(local, long distance)

STEAM HEAT

WASTE WATER

MOTOR CARRIER

(e.g., taxi, moving company, limousine)

RECEIVED
2011 JAN 10 AM 10:27
PA.P.U.C.
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 had one telephonic hearing, appealed it. I was informed of the appeal date, and asked for another telephonic hearing - I was never contacted. Some of the charges are more than 4 years old - I know you cannot collect a debt that is more than 4 years old. A payment arrangement was set by the 1st judge at \$253.00 per month, then PECO set up another arrangement telling me to pay my bill plus \$72.07. I did this. Then I received a judgement for the 2nd hearing that I was to pay \$2000 or more per month plus my bill that is impossible.

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.

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) _____

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 Melissa Randall, 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).

Melissa Randall (Signature) 1-6-11 (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 |
|---|--|

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.

Exhibit “6”

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

MELISSA RANDALL
Complainant

v.

PECO ENERGY COMPANY
Respondent

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Docket No. C-2011-2219901

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

Pursuant to 52 Pa Code § 5.61, PECO Energy (hereafter “PECO” or the “Company”) responds to the Complaint of the Complainant as follows:

ANSWER

1. Admitted.
2. Admitted.
3. Admitted.
4. Denied in part, admitted in part. To the extent the allegations contained in Paragraph 4 constitute conclusions of law or ultimate fact, such facts and conclusions are denied.

Complainant raises three issues in the instant Complainant:

- First, Complainant claims that she already had a telephonic hearing, which PECO admits. Complainant filed a prior formal complaint against PECO Energy at Docket No. F-2008-2065525. A telephonic hearing was held on February 23, 2009 before Administrative Law Judge Cynthia Williams Fordham. ALJ Fordham issued an Initial Decision on June 16, 2009

dismissing the complaint. Complainant filed exceptions on July 16, 2009. On March 11, 2010 the PUC issued an Opinion and Order, granting Complainant a 6-month payment agreement, and dismissing her Complaint.

- Second, Complainant claims that PECO is prohibited from requesting payment of balances accrued more than four years ago. At the outset, PECO notes that its payment priority rules require it to apply payments to the oldest charges first. To the extent that Complainant makes payments on her account, those payments are applied to the older charges. Therefore, PECO denies that Complainant's balance is comprised of charges accrued more than 4 years ago.

Moreover, PECO denies that it is barred from collecting debts older than four years. Commission regulations do not require a public utility to forfeit collection of a debt properly billed merely because the customer failed to render timely payment.

- Third, Complainant requests another payment agreement. PECO avers that Complainant is not entitled to a Commission issued agreement for two reasons. First, Complainant's request for terms is barred by the doctrine of Res Judicata. Complainant's balance was \$10,770.61 at the time of her last hearing on February 23, 2009. Complainant has not satisfied the balance that the subject of the Final Opinion and Order in the prior case. Second, Complainant defaulted on a prior Commission-issued agreement. 66 Pa.C.S. §1405(d). Complainant has not alleged a significant change of income.

5. Paragraph 5 is a Request for Relief to which PECO Energy has filed Preliminary Objections. To the extent that this paragraph contains conclusions of law, or ultimate facts to be

6. Denied. PECO is without knowledge or information sufficient to form a belief as to the truth of this averment and, therefore, such allegation is deemed denied.

7. Admitted.

NEW MATTER¹ OF RESPONDENT

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

1. On or about January 6, 2011 Complainant filed the instant complaint with the Public Utility Commission. In the complaint, Complainant requests another payment agreement.
2. PECO is filing a timely Answer, New Matter and Preliminary objections in response to the Complaint.
3. PECO raises the affirmative defense of Res Judicata.
4. On September 19, 2008, Complainant filed a formal complaint against PECO Energy Company requesting a payment agreement.
5. On October 16, 2008, PECO filed a response denying the material allegations of the complaint.
6. A telephonic hearing was held with Administrative Law Judge Cynthia Fordham on February 23, 2009.
7. On June 16, 2009, the ALJ rendered a decision dismissing the complaint. A copy of the decision is attached as Exhibit 1.

8. Complainant filed exceptions on July 16, 2009.

9. On March 11, 2010, the PUC Issued an Opinion and Order granting Complainant terms to pay her balance within six months. A copy of the Order and Opinion is attached as Exhibit 2.

10. At that time, Complainant's balance was \$10,770.61. Complainant's balance is now \$11,347.05.

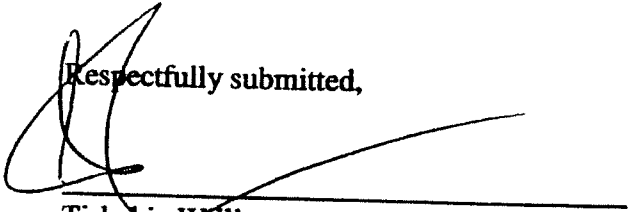
11. Complainant has not pled a change in income.

12. PECO avers that Complainant's attempt to request another payment agreement from the PUC is barred by the doctrine of Res Judicata. Complainant was afforded a full and fair opportunity to present her case. A final decision was issued granting Complainant a 6 month payment agreement on her balance of \$10,770.61. Complainant cannot receive another payment agreement until she pays off the balance on which she has already received an agreement. Accordingly, Complainant's claim is barred.

¹ Complainant is advised that a written response to the New Matter is required within 20 days of service. The response shall be filed with the Commission, with a copy to PECO Energy at the address provided in this Answer.

WHEREFORE, for all of the reasons stated herein, PECO respectfully requests that the Complaint be dismissed with prejudice.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Tishkia Williams', is written over a horizontal line. The signature is stylized and loops back to the left.

Tishkia Williams
PECO Energy Company
2301 Market Street, S23-1
PO Box 8699
Philadelphia, PA 19101-8699
(215) 841-6841
Fax: 215.568.3389

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

MELISSA RANDALL
Complainant

v.

PECO ENERGY COMPANY
Respondent

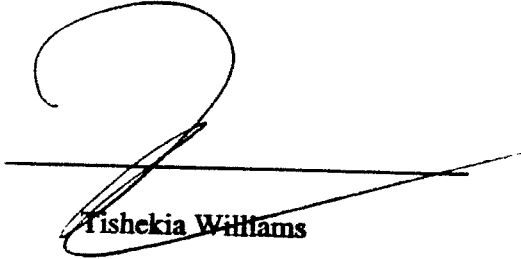
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Docket No. C-2011-2219901

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: January 31, 2011


Tishekia Williams

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

MELISSA RANDALL
Complainant

v.

PECO ENERGY COMPANY
Respondent

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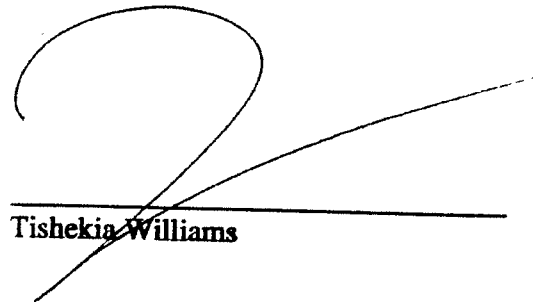
Docket No. C-2011-2219901

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of the foregoing Answer and New Matter 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

MELISSA RANDALL
416 East State Street
Media, PA 19063



Tishekia Williams

DATED: January 31, 2010

Exhibit “7”

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Melissa Randall

v.

PECO Energy Company

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C-2011-2219901

INITIAL DECISION

Before
Angela T. Jones
Administrative Law Judge

HISTORY OF THE PROCEEDING

On or about January 10, 2011, Melissa Randall (“Complainant”) filed a formal Complaint (“Complaint”) against PECO Energy Company (“PECO” or “Company” or “Respondent”). Complainant alleged that she had been through a telephonic hearing process which she appealed but never received anything after her appeal. Complainant averred that a judge set a payment arrangement to pay \$253 per month. Complainant then contended that PECO set a payment arrangement to pay her current bill plus \$72.07 per month. Complainant stated she complied with the PECO payment arrangement and received a judgment from a second judge to pay in excess of \$2000 plus her current bill per month. Complainant contends that the terms of the last payment arrangement are impossible for her to comply with. Complainant requested a new payment arrangement.

On January 31, 2011, Tishekia Williams, Esquire, counsel for PECO, filed an Answer and New Matter with a Notice to Plead to the Complaint. PECO confirmed that Complainant did have a telephonic hearing on February 23, 2009, before Administrative Law Judge (“ALJ”) Cynthia Williams Fordham at Docket No. F-2008-2065525. ALJ Fordham issued

an Initial Decision at Docket No. F-2008-2065525 on June 16, 2009, dismissing the formal complaint. Complainant filed Exceptions to the Initial Decision which the Commission ruled upon by finding:

- (1) Complainant had been given four (4) previous payment arrangements all of which she failed to comply with, the first of which occurred in February 2004;¹
- (2) That Section 1405(d) of the Public Utility Code went into effect after the Complainant's first payment arrangement and thus, a pre-Chapter 14 payment arrangement does not prohibit the Commission from establishing a payment arrangement pursuant to Chapter 14 before the prohibition under Section 1405(d) was applicable, 66 Pa.C.S. § 1405(d);
- (3) The Commission's Bureau of Consumer Services ("BCS") did have authority to issue a payment arrangement under the circumstances presented in the complaint of August 2008 because the 2008 complaint was the first post-Chapter 14 payment arrangement requested by the Complainant;
- (4) The 2008 Complaint was a timely appealed of the BCS decision; and
- (5) Based upon the Complainant's household income, the 2008 BCS decision was inconsistent with Chapter 14 and should be amended.

Randall v. PECO Energy Company, Docket No. F-2008-2065525, Opinion and Order, entered April 5, 2010, at 8-9. Consistent with Chapter 14 Section 1405(b)(4), 66 Pa.C.S. § 1405(b)(4), the Commission granted Complainant a 6 month payment agreement on the outstanding balance in excess of \$10,770.² *Id.*

By New Matter PECO stated that the Complainant in the instant Complaint is requesting another payment agreement and has not pled a change in income. PECO contended that the instant Complaint is barred by the doctrine of res judicata or claim preclusion because the Complainant was afforded a full and fair opportunity to present her case at Docket No. F-2008-2065525. PECO further argued that Complainant was issued a final decision by the

¹ The 2004 payment arrangement was the only one of the four arrangements issued by the Commission.

² Six month payments of \$10,770.00 is about \$1795.00 per month. If you add current bill payment, then the total amount due could be in excess of \$2000.00 which is the amount complained of.

Commission and cannot receive another payment agreement until she pays off the balance on the existing payment agreement.

By letter filed February 22, 2011, Complainant stated that she was not present at the public meeting when the Commission considered the Exceptions filed at Docket No. F-2008-2065525. Complainant alleged a change in household income. Complainant provided household income and expenses data and requested a telephonic hearing.

By Hearing Notice dated May 18, 2011, an Initial In-Person hearing was scheduled for Monday, July 25, 2011 at 10 a.m. The Hearing Notice also noted undersigned ALJ was assigned as the presiding officer of the Complaint.

By Prehearing Order dated May 24, 2011, the undersigned ALJ noted that the letter filed by the Complainant on February 22, 2011, did not appear to have been served on the Respondent. The undersigned ALJ attached the Complainant's letter to the Prehearing Order. The Prehearing Order also affirmed that the Complainant did not plead change of income in her Complaint, but did allege change in income in her letter dated February 22, 2011. The Prehearing Order acknowledged that a determination of whether the Complainant's household income had changed is a fact that must be verified and thus cause for an evidentiary hearing.

By letter dated June 28, 2011, but received by the undersigned ALJ on July 1, 2011, the Complainant reiterated her request for a telephonic hearing because of her medical condition of Stage 3 Rectal Cancer. Complainant requested that the scheduled July 25, 2011, evidentiary hearing proceed telephonically and provided her telephone number to be used for a telephonic hearing. By memorandum dated July 5, 2011, the undersigned filed the Complainant's June 28th letter with the Commission.

By letter dated July 6, 2011, the undersigned ALJ exercised her discretion and granted the request of the Complainant for a telephonic hearing on July 25, 2011. In addition, the undersigned ALJ provided procedure for witnesses, documents and exhibits to be identified and distributed in a telephonic hearing.

By Hearing Notice dated July 18, 2011, the scheduled telephonic hearing was rescheduled for an Initial In-Person Hearing on September 19, 2011 at 10 a.m.³

On July 19, 2011, the undersigned received a significant number of proposed exhibits from the Complainant with corresponding copies for the court reporter.

By facsimile received by the undersigned on September 12, 2011,⁴ the Complainant requested a continuance citing medical health reasons and provided a note from her primary care physician to explain the medical health problems in more detail. The request was copied to counsel for PECO and the undersigned filed the request with the Commission's Secretary's Bureau.

By Prehearing Order #2 dated September 15, 2011, the undersigned denied the requested continuance as it was confirmed by the undersigned that the primary care physician thought the scheduled hearing was in-person. The primary care physician affirmed that the Complainant could participate in the scheduled hearing telephonically. In the Order dated September 15, 2011, the undersigned stated that the scheduled hearing for September 19, 2011, was scheduled in-person in error and is to be conducted telephonically.

By facsimile dated September 15, 2011, counsel for PECO indicated that they would send seven proposed exhibits by overnight package for the scheduled September 19, 2011, evidentiary hearing.

The evidentiary hearing convened telephonically as intended. Melissa Randall, the Complainant, appeared representing herself. PECO was represented by Tishekia Williams, Esquire, and was accompanied by one witness. As a preliminary matter, Complainant stated that she felt it was not equitable to receive the proposed exhibits from PECO about four days before the scheduled hearing which did not provide her adequate time to prepare for the hearing. Tr. 6-

³ The undersigned ALJ had death in her family and was not available for the scheduled hearing on July 25, 2011.

⁴ The facsimile was dated October 12, 2011, however, that is an obvious error because the undersigned received the facsimile a month before October 12, 2011, occurred.

10. It was revealed that PECO relied on the Hearing Notice dated July 18, 2011, that the proceeding was in-person. PECO did not prepare for a telephonic hearing until receiving the Prehearing Order #2 dated September 15, 2011.

The undersigned ALJ determined that the factual matter of whether there was a legally significant change in the household income of the Complainant was pivotal as to whether any further evidence needed to be elicited from the parties. Thus, the ALJ ruled that this hearing would be limited to testimony regarding the household income of the Complainant. Once that issue was determined, the ALJ would proceed forward with either a decision or scheduled further hearing as necessary.

Complainant initially objected to the ruling but decided she did not have any grounds to object and withdrew her objection. Tr. 18-19. PECO did not object. Complainant subsequently objected to her testimony being limited to her household income. Tr. 22-23. Complainant's objection was overruled.

The hearing proceeded under the ruling made by the undersigned ALJ limiting the testimony from both parties. Complainant provided one exhibit marked as Randall Exhibit 1, which was a table of the household net monthly income and the household monthly expenses. Randall Exhibit 1 was updated to provide the current expenses of two items: (1) cable television, telephone and Internet; and (2) housecleaning. Complainant provided testimony and was cross-examined about her household income and the differences between the current income and the income of her 2008 formal complaint and what was the net annual income of the household currently. The evidentiary hearing generated a transcript of 66 pages.

By Order #3 dated September 20, 2011, the undersigned directed the Complainant to provide current household income by September 30, 2011, as an update to Randall Exhibit 1. Complainant complied and sent what is identified as Randall Exhibit 2, to the undersigned and opposing counsel. Opposing counsel did not object to the updated Randall Exhibit 1 or the information identified as Randall Exhibit 2. Randall Exhibit 1 was admitted by Order #3 and

PECO's failure to object by September 23, 2011. Randall Exhibit 2 was admitted by Order #3 and PECO's failure to object by October 11, 2011. This matter is ripe for decision.

FINDINGS OF FACT

1. Complainant resides at 416 East State Street, Media, Pennsylvania where she receives electric service from PECO. Tr. 24-25.
2. Complainant is complaining about her electric service from PECO. Tr. 25.
3. Complainant testified that in 2008 her monthly household net income was approximately \$6,000. Tr. 26-29, 32-33.
4. In 2008 Complainant's household was composed of four adults, Complainant, her husband, and two adult sons. Tr. 27-28.
5. Complainant's net income for the household in January 2011, when the instant Complaint was filed was \$5,046. Tr. 30-32 and Randall Exhibit 1.
6. In January 2011, the composition of Complainant's household consisted of three adults, Complainant, her husband and one adult son. Tr. 32.
7. In January 2011, Complainant's adult son's gross monthly income was \$3,321.96 (paid on January 7, 2011) and \$3,321.96 (paid on January 21, 2011) for a total of \$6,643.92. Randall Exhibit 2.
8. Complainant's husband's weekly benefit rate for unemployment compensation is \$192 for the 52 week period beginning November 7, 2010 through November 5, 2011. Consequently, Complainant's husband's gross monthly compensation is \$192 x 4weeks/month which is \$768. Randall Exhibit 2.

DISCUSSION

There is no dispute that the Complainant has had a previous post-Chapter 14, Commission issued payment agreement. Complainant is soliciting a new payment agreement because the Commission issued payment agreement is a hardship to comply with based on her household income. Complainant does not dispute that she cannot and did not comply with the Commission issued payment agreement. However, Complainant contended that her household income has changed. The issue to be determined is whether the alleged change in the Complainant's household income is a change of legal significance.

The party filing the Complaint bears the burden of proving that he or she is entitled to relief from the Commission. 66 Pa.C.S. § 332(a). "Burden of proof" means a duty to establish one's case by a preponderance of the evidence, which requires that the evidence be more convincing by even the smallest degree, than the evidence presented by the other side. *Se-Ling Hosiery, Inc. v. Margulies*, 364 Pa. 45, 70 A.2d 854 (1950). To satisfy the burden of proof against a utility, the Complainant must show that the utility is responsible or accountable for the problem described in the Complaint, *Feinstein v. Philadelphia Suburban Water Company*, 50 Pa. P.U.C. 300 (1976), or that the utility has violated either its duty under the Public Utility Code or the orders or regulations of the Commission. 66 Pa.C.S. § 701.

A Complainant can sustain the burden of proof by establishing a sufficient case through a preponderance of the evidence. *Samuel J. Lansberry, Inc. v. Pa. Public Utility Comm'n*, 134 Pa. Commw. 218, 221-222, 578 A.2d 600, 602 (1990); *alloc. den.*, 602 A.2d 863 (1992). That is, by presenting evidence more convincing, by even the smallest amount, than that presented by the other party. *Se-Ling Hosiery v. Margulies*, 364 Pa. 45, 70 A.2d 854 (1950). Additionally, any finding of fact necessary to support the Commission's adjudication must be based upon substantial evidence. *Mill v. Commw., PA Public Utility Comm'n*, 67 Pa. Commw. 597, 447 A.2d 1100 (1982); *Edan Transportation Corp. v. PA Public Utility Comm'n*, 154 Pa. Commw. 21, 623 A.2d 6 (1993); 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. *Norfolk and Western Ry. v. Pa. Public Utility Comm'n*, 489 Pa. 109, 413 A.2d 1037 (1980); *Erie Resistor Corp. v. Unemployment Compensation Bd. of Review*, 194 Pa.

Super. 278, 166 A.2d 96 (1960); *Murphy v. Commonwealth, Dept. of Public Welfare, White Haven Center*, 85 Pa. Commw. 23, 480 A.2d 382 (1984).

Section 1405(d) of the Public Utility Code states,

(d) Number of payment agreements.—Absent a change in income, the commission shall not establish or order a public utility to establish a second or subsequent payment agreement if a customer has defaulted on a previous payment agreement. A public utility may, at its discretion, enter into a second or subsequent payment agreement with a customer.

66 Pa.C.S. § 1405(d). Section 1403 defines “change in income” as,

A decrease in household income of 20% or more if the customer’s household income level exceeds 200% of the Federal poverty level or a decrease in household income of 10% or more if the customer’s household income level is 200% or less of the Federal poverty level.

66 Pa.C.S. § 1403.

The undersigned ALJ takes judicial notice that regarding the 2008 formal complaint,

The Complainant verified her monthly gross household income to be \$7,962.85 (the Complainant’s husband’s monthly gross income is \$6,534.37 with the rest contributed by the adult children)... A household consisting of two adults and two children with a combined monthly gross income of \$7,962.85 exceeds the 300 percent poverty level threshold.

Randall v. PECO Energy Company, Docket No. F-2008-2065525, Opinion and Order entered April 5, 2010, at 6. Thus, the income considered for the Commission ordered payment agreement was \$7,962.85 monthly for a family household of four which exceeded the 300% poverty level threshold.

In comparison the gross monthly household income for 2011 is \$6,643.92 for the Complainant's son and \$768 for the Complainant's husband, a sum of \$7,411.92.⁵ Randall Exhibit 2. While this is a slight decrease in income, the other consideration is the size of the household. The Complainant testified that the size of the household has also decreased from four adults to three adults. Tr. 32. For a family size of three a gross monthly income of \$4,632.50 is 300% of the Federal poverty level. *Federal Register*, Vol. 76, No. 13, January 20, 2011, at 3637-38. Regarding Complainant's gross household income, while it did decrease from that which was considered for her 2008 formal complaint, the decrease is of no legal significance.⁶

In compliance with Section 1403 of the Public Utility Code, the Complainant has not experienced a legally significant change in income. See 66 Pa.C.S. § 1403, *supra* at 8. Furthermore, because there is no legally significant change in income, the Commission must comply with Section 1405(d) of the Public Utility Code and is prohibited from granting a payment agreement in this instant proceeding. See 66 Pa. C.S. § 1405(d), *supra* at 8.

CONCLUSIONS OF LAW

1. The party filing the Complaint bears the burden of proving that he or she is entitled to relief from the Commission. 66 Pa.C.S. § 332(a).

2. "Burden of proof" means a duty to establish one's case by a preponderance of the evidence, which requires that the evidence be more convincing by even the smallest degree, than the evidence presented by the other side. *Se-Ling Hosiery, Inc. v. Margulies*, 364 Pa. 45, 70 A.2d 854 (1950).

3. The Commission has jurisdiction over the parties to and the subject matter of this proceeding. 66 Pa.C.S. § 701.

⁵ \$6,643.92 + \$768 = \$7,411.92.

⁶ The calculated percentage decrease of income is $\{ \$7,962.85 \text{ (2008 income)} - \$7,411.92 \text{ (current income)} \} \div \$7,962.85 \text{ (2008 income)} = 6.92\%$. A percentage change of 6.92% is less than the minimum required 20% for a legally significant change income. See 66 Pa.C.S. §1403, *supra* at 8.

4. Complainant failed to sustain her burden of proof.
5. Complainant's change in household income is not legally significant. 66 Pa.C.S. §§ 1403 and 1405(d).

ORDER

THEREFORE,

IT IS ORDERED:

1. That the formal Complaint filed by Melissa Randall against PECO Energy Company at Docket No. C-2011-2219901 is dismissed.
2. That the Secretary's Bureau shall mark the record at Docket No. C-2011-2219901 closed.

Date: November 21, 2011

Angela T. Jones
Administrative Law Judge

Exhibit “8”

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

Public Meeting held March 15, 2012

Commissioners Present:

Robert F. Powelson, Chairman
John F. Coleman, Jr., Vice Chairman
Wayne E. Gardner
James H. Cawley
Pamela A. Witmer

Melissa Randall

C-2011-2219901

v.

PECO Energy Company

OPINION AND ORDER

BY THE COMMISSION:

Before the Pennsylvania Public Utility Commission (Commission) for consideration and disposition are the Exceptions of Melissa Randall (Complainant) filed on December 27, 2011, to the Initial Decision (I.D.) of Administrative Law Judge (ALJ) Angela T. Jones, issued on December 14, 2011. Replies to Exceptions were filed by PECO Energy Company (PECO) on January 13, 2012. For the reasons stated below we shall grant, in part, and, deny in part, the Exceptions of the Complainant and dismiss the Complaint.

History of the Proceeding

On or about January 10, 2011, the Complainant filed a Formal Complaint (Complaint) with the Commission against PECO, alleging that she had been through a telephonic hearing process which she appealed but never received anything after her appeal. The Complainant averred that initially a judge established a payment arrangement for her to pay \$253 per month and that PECO then established another payment arrangement for her to pay her current bill plus \$72.07 per month. The Complainant also averred that, while she was complying with the PECO payment arrangement, she received another judgment to pay in excess of \$2,000 plus her current bill per month. The Complainant requested a new payment arrangement because she contended that it was not possible for her to comply with the terms of the last payment arrangement.

PECO filed an Answer and New Matter on January 31, 2011, in which PECO confirmed that ALJ Fordham held a telephonic hearing on February 23, 2009, in which ALJ Fordham dismissed the Complaint. PECO also noted that the Complainant had filed Exceptions to ALJ Fordham's Initial Decision and that the Commission disposed of those Exceptions by requiring the Complainant to make six monthly payments to pay off the outstanding balance in accordance with Chapter 14, Section 1405(b)(4) of the Public Utility Code (Code), 66 Pa. C.S. § 1405(b)(4). *See Randall v. PECO Energy Company*, Docket No. F-2008-2065525 (Order entered April 5, 2010).

In its New Matter, PECO stated that in the instant Complaint proceeding, the Complainant requested another payment agreement and has not alleged a change in income. PECO contended that the instant Complaint is barred by the doctrine of *res judicata* or claim preclusion because the Complainant was afforded a full and fair opportunity to present her case at Docket No. F-2008-2065525. PECO further argued

that the Commission issued a final decision concluding that the Complainant is not entitled to another payment agreement until she pays off the balance on the existing payment agreement.

In a letter filed on February 22, 2011, the Complainant provided additional information regarding her current household net income and expenses. In that letter, the Complainant alleged that the number of family members living in her household has changed. By Prehearing Order dated May 24, 2011, ALJ Jones granted the Complainant's request for a hearing acknowledging that a determination of whether the Complainant's household income had changed is a fact that must be verified through an evidentiary hearing.

A telephonic hearing was conducted by ALJ Jones on September 19, 2011. As a preliminary ruling, the ALJ determined that the hearing would be limited to testimony regarding the household income of the Complainant. The Complainant appeared *pro se* and sponsored one exhibit which was admitted into the record. PECO was represented by counsel and presented the testimony of one witness. As per the ALJ's directive, the Complainant provided updated information regarding her current household income, which was admitted into evidence by the ALJ's Order #3 dated September 19, 2011. The evidentiary hearing generated a transcript of 66 pages.

On December 14, 2011, the Commission issued ALJ Jones's Initial Decision in which she recommended dismissal of the Complaint for failure by the Complainant to carry her burden of proof. I.D. at 10. As previously noted, Exceptions

were filed by the Complainant on December 27, 2011.¹ PECO filed Replies to Exceptions on January 13, 2012.

Discussion

A. Burden of Proof

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 Respondent is responsible or accountable for the problem described in the Complaint. *Patterson v. The 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 Respondent. *Se-Ling Hosiery, Inc. 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).

¹ We note that the Complainant's Exceptions do not strictly comply with Section 5.533(b) of our Regulations, 52 Pa. Code § 5.533(b), which requires that exceptions be numbered, identify the finding of fact and conclusion of law to which exception is taken, and cite to the relevant pages of the Initial Decision. Nevertheless, particularly because the Complainant is appearing *pro se*, we will accept the Exceptions as filed pursuant to Section 1.2(a) of our Regulations, 52 Pa. Code § 1.2(a), to secure a just, speedy, and inexpensive determination in this proceeding.

Upon the presentation by a complainant of evidence sufficient to initially satisfy the burden of proof, the burden of going forward with the evidence, sometimes called the burden of persuasion, to rebut the evidence of the customer shifts to the respondent. If the evidence presented by the respondent is of co-equal value or “weight,” the burden of proof has not been satisfied. The complainant now has to provide some additional evidence to rebut that of the respondent. *Burleson v. Pa. PUC*, 443 A.2d 1373 (Pa. Cmwlth. 1982), *aff’d*, 501 Pa. 433, 461 A.2d 1234 (1983).

While the burden of persuasion may shift back and forth during a proceeding, the burden of proof never shifts. The burden of proof always remains on the party seeking affirmative relief from the Commission. *Milkie v. Pa. PUC*, 768 A.2d 1217 (Pa. Cmwlth. 2001).

B. Legal Standards

With regard to the Complainant’s allegation that she cannot pay the utility bills as requested, any decision thereon must be consistent with the provisions of the *Responsible Utility Customer Protection Act* (Act 201). Act 201, which became effective on December 14, 2004, enacted Chapter 14 of the Public Utility Code (Code), 66 Pa. C.S. §§1401, *et seq.* Chapter 14 directs how the Commission must establish payment arrangements. Section 1405 of the Code, 66 Pa. C.S. § 1405, regarding payment arrangements, reads in pertinent part:

(b) LENGTH OF PAYMENT AGREEMENTS. The length of time for a customer to resolve an unpaid balance on an account that is subject to a payment agreement that is investigated by the commission and is entered into by a public utility and a customer shall not extend beyond:

- (1) Five years for customers with a gross monthly household income level not exceeding 150% of the Federal poverty level.
- (2) Two years for customers with a gross monthly household income level exceeding 150% and not more than 250% of the Federal poverty level.
- (3) One year for customers with a gross monthly household income level exceeding 250% of the Federal poverty level and not more than 300% of the Federal poverty level.
- (4) Six months for customers with a gross monthly household income level exceeding 300% of the Federal poverty level.

(d) Number of payment agreements. Absent a change in income, the Commission shall not establish or order a public utility to establish a second or subsequent payment agreement if a customer has defaulted on a previous payment agreement. A public utility may, at its discretion, enter into a second or subsequent payment agreement with a customer.

As noted above section 1405(d) of the Code limits the Commission's ability to establish more than one payment arrangement for a customer absent a change in income. Section 1403 of the Code, 66 Pa. C.S. § 1403, defines "change in income" as follows:

[a] decrease in household income of 20% or more if the customer's household income level exceeds 200% of the Federal poverty level or a decrease in household income of 10% or more if the customer's household income level is 200% or less of the Federal poverty level.

C. The ALJ's Recommendation

The ALJ made eight Findings of Fact and reached five Conclusions of Law. I.D. at 6, 9-10. 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 her Initial Decision, the ALJ found that the Complainant's change in household income was not considered legally significant under Section 1403 of the Code, 66 Pa. C.S. § 1403. I.D. at 9, 10. The ALJ noted that for a family size of three, a gross monthly income of \$4,632.50 is 300% of the Federal Poverty Level (FPL). I.D. at 9 (citing 76 Fed. Reg. 13, 3637-38 (Jan. 20, 2011)). The ALJ determined that, because the Complainant's income exceeded 300% of the FPL, she would have needed to demonstrate a change in income of at least 20% to qualify for a payment agreement. I.D. at 9 (citing 66 Pa. C.S. § 1403).

The ALJ took judicial notice of the Complainant's 2008 household income of \$7,962.85. I.D. at 8 (citing *Randall v. PECO Energy Company*, Docket No. F-2008-2065525 (Order entered April 5, 2010), at 6). When compared to the Complainant's 2011 household income of \$7,411.92, the result was a decrease of 6.92%. The ALJ found that the decrease in the Complainant's household income was not legally significant to establish a new payment agreement. The ALJ also noted that, because there was not a legally significant change in income, the Commission was prohibited by Section 1405(d) of the Code, 66 Pa. C.S. § 1405(d), from granting a payment agreement in the instant proceeding. I.D. at 9.

D. The Complainant's Exceptions

As a preliminary matter, we note that any issue or Exception that we do not specifically address shall be deemed to have been duly considered and denied without further discussion. It is well settled that the Commission is not required to consider, expressly or at length, each contention or argument raised by the parties. *Consolidated Rail Corp. v. Pennsylvania Public Utility Commission*, 625 A.2d 741 (Pa. Cmwlth. 1993); *see also, generally, University of Pennsylvania v. Pa. PUC*, 485 A.2d 1217 (Pa. Cmwlth. 1984).

The Complainant's Exceptions consist of two type-written sheets consisting of narration of several prior payment arrangements she had with PECO and her alleged compliance to those agreements. The Exceptions do not specifically contest any conclusions or Finding of Facts in the ALJ's Initial Decision.

In her Exceptions, the Complainant also points out an error in the ALJ's Findings of Fact Numbers 7 and 8 regarding household income provided by her husband and son. The Complainant clarifies that her husband's Gross monthly income was \$6,643.92, and that her son's unemployment compensation was \$768 per month. The Complainant also submits that debt older than four years does not have to be paid. Exc. Nos. 2-4.

Based upon her net monthly household income, the Complainant argues that it is impossible for her to pay the amount that the Commission directed in the proceeding at Docket No. F-2008-2065525. Instead, she claims she is willing to pay up to \$200 per month plus monthly charges. Exc. Nos. 8, 9.

In reply, PECO avers that the Complainant did not meet her burden of proof to demonstrate to the Commission that she qualifies for a Commission-ordered

payment arrangement due to a change in household income. R. Exc. at 9. PECO notes that the Complainant offered evidence consisting of her testimony and two exhibits reflecting a gross household income of approximately \$7,425.

PECO contends that while the Complainant's household income in 2011 decreased to \$7,411.92, and the family size decreased to three household members, this is not a sufficient decrease in household income for the Commission to order a payment agreement. PECO submits that, since the Complainant's income exceeded 300% of the Federal poverty level, she is required to demonstrate a change in income of at least 20%. However, the percentage change in the Complainant's income was only 6.92%, which PECO claims is significantly less than the 20% change in income needed to qualify for a Commission payment agreement. R. Exc. at 8.

F. Disposition

We agree with the ALJ's finding and PECO's Replies to the Complainant's Exceptions that the Complainant failed to sustain her burden of proof. The Complainant verified her monthly gross household income was \$7,962.85. A household consisting of three adults with a combined monthly gross income of \$7,962.85 exceeds 300 percent of the FPL. The percentage change in Complainant's income is only 6.92%, which is significantly less than the 20% change in income that is required by Sections 1405(d) and 1403 of the Code, 66 Pa. C.S. §§ 1405(d) and 1403, in order for a customer to qualify for a Commission payment agreement. Therefore, pursuant to Section 1405(b) of the Code, 66 Pa. C.S. § 1405(b), the Complainant must pay off the arrearage on this account within six months. As such, we shall deny that portion of the Complainant's Exceptions in which she requests a new payment arrangement.

Nevertheless, based upon our review of the record we agree with the Complainant that Findings of Fact Nos. 7 and 8 in the ALJ's Initial Decision should be modified to reflect correctly that the Complainant's husband's gross monthly income was \$6,643.92, and her son's unemployment compensation was \$768 per month. As such, we grant this portion of the Exceptions and modify the Initial Decision accordingly.

Conclusion

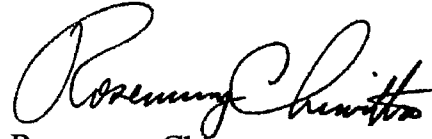
Upon our review and consideration of the record evidence, we shall grant the Complainant's Exceptions, in part, and deny them, in part, consistent with the foregoing discussion ; **THEREFORE;**

IT IS ORDERED:

1. That the Exceptions of Melissa Randall filed on December 21, 2011, to the Initial Decision of Administrative Law Judge Angela T. Jones are granted, in part, and denied, in part, consistent with this Opinion and Order.
2. That the ALJ's Initial Decision is modified for the purpose of correcting Findings of Fact Nos. 7 and 8 in the ALJ's Initial Decision to reflect correctly that the Complainant's husband's gross monthly income was \$6,643.92, and her son's unemployment compensation was \$768 per month.
3. That the Initial Decision of Administrative Law Judge Angela T. Jones, issued December 14, 2011, as modified, is adopted.
4. That the Complaint filed by Melissa Randall against PECO Energy Company on January 10, 2011, at Docket No. C-2011-2219901 is dismissed.

5. That this case shall be marked closed.

BY THE COMMISSION,



Rosemary Chiavetta
Secretary

(SEAL)

ORDER ADOPTED: March 15, 2012

ORDER ENTERED: MARCH 15, 2012