

Legal Department

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Business Services
Company

Exelon Business Services Company
2301 Market Street/523-1
P.O. Box 8699
Philadelphia, PA 19101-8699
Direct Dial: 215.841.6841

August 14, 2012

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

RECEIVED

AUG 14 2012

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

RE: Mark Mazza v. PECO Energy Company
PUC Docket No. C-2012-2318472

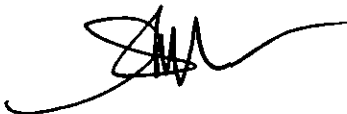
Dear Ms. Chiavetta:

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

<input type="checkbox"/>	Answer (Original and 3 copies)
<input type="checkbox"/>	Answer & New Matter (original)
<input type="checkbox"/>	Motion to consolidate (original)
<input type="checkbox"/>	Motion for Judgment on the Pleadings (original)
<input checked="" type="checkbox"/>	Preliminary Objection (original)
<input type="checkbox"/>	Exceptions (original)
<input type="checkbox"/>	Reply Exceptions (original)
<input type="checkbox"/>	Brief (original)
<input type="checkbox"/>	Reply Brief (original)

I have enclosed a Certificate of Service showing that a copy of the above document was served on the interested parties. Also enclosed is an extra copy of this letter, which I request that you date stamp and return to me in the envelope provided as proof of filing. Thank you for your time and attention on this matter.

Very truly yours,



Shawane L. Lee
Counsel for PECO Energy Company
SL/lo
Enc.

Scheduling Recommendation: Call of the Docket Non Call of the Docket

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

MARK MAZZA	:	
Complainant	:	
v.	:	DOCKET NO. C-2012-2318472
	:	
PECO ENERGY COMPANY	:	
Respondent	:	

NOTICE TO PLEAD

Pursuant to 52 Pa. Code §§ 5.102 and 5.62(c), you are hereby notified that, if you do not file a written response denying or correcting the enclosed Preliminary Objection of PECO Energy Company, within 10 days from service of this notice, your case may be dismissed. All pleadings, such as a Reply to Motions must be filed with the Secretary of the Pennsylvania Public Utility Commission, with a copy served to counsel for PECO Energy Company, Shawane L. Lee, and where applicable, the Administrative Law Judge presiding over the issue.

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

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

Dated at Philadelphia, PA, August 13, 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

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PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

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**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**
PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

MARK MAZZA	:	
Complainant	:	
v.	:	DOCKET NO. C-2012-2318472
	:	
PECO ENERGY COMPANY	:	
Respondent	:	

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

Respondent, PECO Energy Company (“PECO”), pursuant to 52 Pa. Code §5.101(6), respectfully petitions this Honorable Commission to dismiss the instant complaint for abuse of the legal process and because there are presently three other actions open regarding the same issues.

I. BACKGROUND AND PROCEDURAL HISTORY

1. On August 9, 2012, PECO Energy was served with a formal complaint filed by Mark Mazza (hereafter “Complainant”). A copy of the Formal Complaint is attached hereto as Exhibit “1”.

2. Complainant alleges that PECO Energy issued a ten day termination notice, dated July 26, 2012. See Formal Complaint, attached hereto as Exhibit “1”. Complainant alleges that the termination notice was premature because he has a formal complaint on appeal to the Commonwealth Court of Pennsylvania. See id. He also claims that he has another formal complaint that has yet to receive a final order. Id. The Complainant alleges that the appeals process has not been exhausted for his cases; and therefore, the ten day notice should be stayed based on due process grounds. Id.

A. Formal Complaints C-2009-2118230 and C-2009-2120401

3. All of the allegations raised in the current formal complaint (C-2012-2318472), concerning the termination notice have been raised by the Complainant in four prior actions, three of which are still pending.

4. Specifically, on July 10, 2009, PECO Energy was served with a formal complaint filed by the Complainant at docket number C-2009-2118230. The Complainant alleged improper termination notice and requested a payment agreement. A copy of the Complaint is attached as Exhibit "2".

5. On July 22, 2009, PECO Energy received a second formal complaint at docket number C-2009-2120401. Complainant raised the same allegations in this complaint. The Complainant alleged improper termination notice and requested a payment agreement. A copy of the Complaint is attached as Exhibit "3".

6. On July 30, 2009, PECO Energy filed an Answer and Motion to consolidate the two matters (C-2009-2118230 and C-2009-2120401).

7. . On September 16, 2009, the Motion to Consolidate was granted.

8. By hearing notice dated March 15, 2010, the hearing was scheduled for April 13, 2010. The initial hearing convened as scheduled and a further hearing was held on June 15, 2010.

9. On July 26, 2010, Administrative Law Judge Angela T. Jones issued a decision dismissing the complaint as it relates to the termination allegations, and granted Complainant a twenty-four month payment agreement to satisfy his balance. A copy of the initial decision is attached as Exhibit "4".

10. On September 29, 2010, the Complainant filed exceptions claiming that his constitutional rights were violated and the agreement was improper.

11. By Order dated October 1, 2010, the Commission upheld the initial decision of the Administrative Law Judge and issued a Final Order. A copy of the Order is attached as Exhibit "5".

12. The Complainant filed an appeal to the Commonwealth Court of the Commission's October 1, 2010, Order at Commonwealth Court at Docket Number 2606 C.D. 2010.

13. By Order dated, January 4, 2012, the Commonwealth Court affirmed the Commission's October 1, 2010, Order. A copy of the Order is attached as Exhibit "6".

14. The Complainant filed a Petition for Review of the Commonwealth Court Order, dated January 4, 2012.

15. The Petition for Review is still pending.

B. Formal Complaint C-2010-2171324

16. On April 21, 2010, PECO Energy was served with a formal complaint at docket number C-2010-2171324. A copy of the Complaint is attached as Exhibit "7".

17. In the formal complaint, the Complainant again alleged improper termination notice and requested a payment agreement. Complainant also requested that PECO Energy be ordered to reduce his account balance given his inability to pay. See id.

18. On May 11, 2010, PECO Energy filed Preliminary Objections to the Complainant's formal complaint, raising the fact that there are two prior cases under way concerning the termination notices and payment agreement.

19. By Order and Opinion, dated May 2, 2011, Administrative Law Judge David A. Salapa dismissed the Complainant's formal complaint. A copy of the Order is attached hereto as Exhibit "8".

20. On July 15, 2011, the Commission issued a Final order and closed the case at docket number C-2010-2171324. A copy of the Order is attached hereto as Exhibit "9".

C. Formal Complaint C-2011-2235775

21. On April 13, 2011, PECO Energy was served with a formal complaint docketed at C-2011-2235775. A copy of the Complaint is attached as Exhibit "10".

22. In his Complaint, the Complainant alleged improper and insufficient termination notices. See id.

23. On May 12, 2011, PECO Energy filed Preliminary Objections to the Complainant's formal complaint, raising the fact that there were three prior cases under way concerning the termination notices.

24. On June 28, 2011, Administrative Judge Elizabeth Barnes recommended PECO's Preliminary Objections be granted and the complaint be dismissed with prejudice on the grounds of lis pendens. A copy of the Order is attached hereto as Exhibit "11".

25. The Complainant filed Exceptions and the Commission granted these exceptions in part, as well as reversed and remanded ALJ Barnes' Initial Decision for a hearing. Mark Mazza v. PECO Energy Company, C-2011-2235775, Opinion and Order dated December 1, 2011. A copy of the Order is attached hereto as Exhibit "12".

26. On March 9, 2012, a telephonic hearing on remand was held on March 9, 2012.

27. Both parties presented evidence at the hearing.

28. By Order, dated April 16, 2012, ALJ Barnes dismissed the Complainant's formal complaint. A copy of the Order is attached hereto as Exhibit "13".

29. On June 1, 2012, the Commission issued a Final Order, dismissing the Complainant's formal complaint. A copy of the Order is attached hereto as Exhibit "14".

30. On July 26, 2012, the Complainant appealed the Commission's June 1, 2012, Order to the Commonwealth Court of Pennsylvania.

31. The Commonwealth appeal is still pending.

II. STANDARD OF REVIEW

32. 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).

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

34. 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

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

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

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

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.

38. 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.

39. 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).

40. 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.

III. LEGAL ARGUMENT

A. The Complainant's Formal Complaint Should be Dismissed for Abusing the Legal Process

41. Complainant, a former Pennsylvania attorney, who was disbarred on August 3, 2000, has instigated six (6) formal complaints against PECO Energy Company before the Pennsylvania Public Utilities Commission at C-2008-2047803⁶; C-2009-2118230; C-2009-2120401; C-2010-2171324; C-2011-2235775; and C-2012-2318472.

42. The six Complaints are similar in that they involve disputes over payment of bills for electric services received or issues involving termination notices.

43. Given the Complainant's litigious history, this current formal complaint should be dismissed with prejudice.

44. The Complainant has repeatedly filed complaints to stop termination for his arrears and current charges. The result is that Complainant's balance has grown from \$2,431.42 to \$9,742.85.

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

⁶ This formal complaint was settled and PECO Energy filed a Certificate of Satisfaction.

45. The provisions of Chapter 14 are intended to “provide protections against rate increases for timely paying customers resulting from other customers’ delinquencies.” 66 Pa.C.S. §1402(2).

46. The Complainant has used the formal complaint process to avoid payment and to maintain his electric service without payment, which is precisely what Chapter 14 seeks to avoid.

47. Complainant should be precluded from filing additional complaints until the unpaid balance is satisfied. See, e.g., Agnes Manu, et al. v. AT&T Communications of Pennsylvania, Inc.; the Bell Telephone Company of Pennsylvania, Inc. & Philadelphia Electric Company, Inc., Docket Numbers F-09029141, C-00935014, C-00934970, C-00913621, Opinion and Order adopted May 4, 1994, entered May 9, 1994. See Agnes Manu, Opinion attached hereto as Exhibit “15”.

48. In Agnes Manu, Chief Administrative Law Judge Turner urged the Commission to preclude the Complainants from filing any additional complaints because of “the serious abuse of the Commission’s process.” See id.

49. In the decision Agnes Manu, the court agreed with Chief ALJ. The Commission stated:

We agree with Chief ALJ Turner that a party may be precluded from filing additional formal or informal complaints with the Commission if there is an abuse of the administrative process. See August 1993 Order citing Schibelli v. Metropolitan Edison Company, 68 Pa.P.U.C. 286 (1988); also see Arthur Lilly v. William H. Smith, Retired Chairman, Pennsylvania Public Utility Commission, Docket No. C-00913773 (Order entered April 9, 1993), wherein we directed that further filings raising the same issues addressed in a matter shall be dismissed without further proceeding.

See Agnes Manu, supra.

50. The Commission confirmed Chief ALJ Turner in finding that Complainant “after accruing large arrearages, typically files formal and informal Complaints to delay termination of service.”

51. The pattern is exactly the same with PECO Energy Company for electric services received by Complainant as indicated by similar actions filed by Complainant against PECO Energy at C-2008-2047803; C-2009-2118230; C-2009-2120401; C-2010-2171324; C-2011-2235775; and C-2012-2318472.

52. Indeed, Administrative Law Judge Elizabeth H. Barnes indicated this pattern of abuse in her June 10, 2011, Opinion and Order, attached hereto at Exhibit “11”. In her opinion, ALJ Barnes stated:

The record in this case highlights a disturbing trend in Complainant’s use of the informal and formal proceedings to avoid paying his electric bills while evading the Company’s termination procedures. The Commission has on occasion precluded a party from filing further informal and formal complaints when the party has been an abuser of the system. Recently, in Sheri Seidenstricker v. Metropolitan Edison Company, Docket No. F-2008-2019388 (Final Order entered July 28, 2009), the Commission adopted the Administrative Law Judge’s Initial Decision which, inter alia, ordered that complainant be precluded from filing further informal and formal complaints pertaining to the same account until such time as the current balance on that account was paid in full, after finding that complainant had abused the system by using its provisions to prevent termination of service over the course of many years while receiving electric utility service from respondent and accruing a large outstanding balance. Similarly, in the instant case, I find Complainant should be precluded from filing further informal and formal complaints pertaining to his electric account (Account No. 72730-01005) for the service address of 1271 Farm Road, Berwyn, PA 19312, until such time as the current balance on his account is paid in full.

53. The Complainant is now in arrears to PECO Energy Company for electric services in the amount of \$9,742.85 for the premises 1271 Farm Road, Berwyn, PA 19312 under account number 72730-01005. The litigation for this dispute has been ongoing since 2008 and more recently for his open cases, since 2009.

54. The Complainant should not be permitted to waste the time and resources of the PUC, PECO Energy, the Commonwealth Court, or the Supreme Court any further on his claims.

55. PECO Energy respectfully requests that this Honorable Commission consider the foregoing and dismiss the instant action in light of all the prior Complaints.

B. The Complainant's Formal Complaint Should be Dismissed Pursuant to the Doctrine of Lis Pendens

56. In addition to the current formal complaint (C-2012-2318472), the Complainant has instigated five actions against PECO Energy regarding the same issues: his alleged inability to pay for services consumed and PECO's termination practices.

57. Three of the five actions are open (C-2009-2118230; C-2009-2120401; C-2011-2235775), including a Petition for Review with the Supreme Court of Pennsylvania and an appeal to the Commonwealth Court of Pennsylvania.

58. In the current formal complaint (C-2012-2318472), the Complainant is disputing the same exact issue – improper termination notice(s).

59. The current formal complaint should be dismissed in its entirety pursuant to the doctrine of lis pendens because the parties are contesting the same issues pursuant to Complainant's prior formal complaints at (C-2009-2118230; C-2009-2120401; C-2011-2235775).

60. The purposes of recognizing the doctrine of lis pendens are to prevent the respondent from having to defend several suits on the same cause of action at the same time, to prevent the squandering of scarce judicial resources on duplicative actions, to maintain an orderly legal process, and to avoid inconsistent decisions on the same causes of action. "The law is quite clear that lis pendens is a valid defense only when the parties, the cause of action and the relief sought

are the same in both actions (citations omitted).” Procacina v. Susen, 301 Pa. Super. 392, 394, 447 A.2d 1023, 1025 (1982).

61. The three-pronged identity test “requires more than a mere allegation of a pending suit; it requires proof that the prior case is the same, the parties are substantially the same, and the relief requested is the same (citations omitted).” Hillgartner v. Port Authority of Allegheny Cty., 936 A.2d 131, 137 (Pa. Cmwlth. 2007). “It is purely a question of law determinable from an inspection of the records in the two causes.” Hillgartner, 936 A.2d at 138 [quoting Hessenbruch v. Markle, 194 Pa. 581, 45 A. 669 (1900)].

62. In this case, the Complainant has three open cases (C-2009-2118230; C-2009-2120401; C-2011-2235775), that arise from the same facts and circumstances pled in each of the formal complaints.

63. Specifically, in the current formal complaint (C-2012-2318472), the Complainant is disputing the same exact issue as he did at the formal complaints docketed at C-2009-2118230; C-2009-2120401; C-2011-2235775– improper termination notice(s).

64. For instance, in the formal complaint docketed at C-2009-2118230, the Complainant alleges that PECO Energy stated they will “shut off services” and “no written notice of shut off” was received. See Exhibit “2”. The Complainant also seeks a payment agreement.

65. In the formal complaint docketed at C-2009-2120401, the Complainant requests an order from the PUC “compelling and ordering PECO to give [him] a reasonable payment arrangement.” See Exhibit “3”. Additionally, the Complainant requests that PECO be fined “for attempting to shut off service without any notice to [him]”. See Exhibit “3”.

66. In the formal complaint docketed at C-2011-2235775, the Complainant alleges that with a PUC complaint pending, he received a “10 day shut off notice.” See Exhibit “7”. He is

requesting that PECO Energy receive a “fine or sanctions against PECO, as PUC complaint pending.” See Exhibit “7”.

67. In the current formal complaint docketed at C-2012-2318472, the Complainant alleges that PECO Energy “sent me a ten day shut off notice.” See Exhibit “1”. He requests that the “10 day notice be vacated, stricken or stayed, and that PECO be enjoined from taking any action to shut off and/or suspend service.” See Exhibit “1”.

68. In this case, the parties in all four formal complaints are the same. The subject matter of the complaints is the same – 10 day termination notices or pending termination after shut off notices were received. The relief the Complainant requests in all four complaints is the same – for the PUC to stop the pending termination of the Complainant’s electric service.

69. The formal complaints arise from the same set of facts and circumstances, and three of the complaints are currently pending. PECO Energy requests that the instant complaint be dismissed for pendency of a prior proceeding to save the time, resources and the expense of the parties and the Commission of having multiple hearings on the same issues.

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

Respectfully Submitted,

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AUG 14 2012

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU



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

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AUG 14 2012

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

EXHIBIT "1"

PENNSYLVANIA PUBLIC UTILITY COMMISSION

Formal Complaint Form

RECEIVED

Please print in ink or type.

AUG 14 2012

1. CUSTOMER (COMPLAINANT) INFORMATION

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

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

Name MARK MAZZA

Street/P.O. Box 1271 FARM RD. Apt #

City BERWYN State PA Zip 19312

County Chester

Daytime Telephone Number Where We Can Contact You: (610) 889-0614

E-mail Address (optional):

Utility Account Number 7273001005
(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

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3. TYPE OF UTILITY (check one)

AUG -1 2012

ELECTRIC

STEAM HEAT

GAS

WASTE WATER

WATER

MOTOR CARRIER

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

TELEPHONE
(local, long distance)

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. / shut off
- 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.

PECO sent me a ten day shut off notice dated July 26, 2012 (attached). Called PECO and told notice was sent because the 2 PUC cases were marked as closed. Advised the PECO rep. the cases were open, and in my position the 10 day notice was premature. The recent case decided by PUC Administrative Judge Barnes is now on appeal to Commonwealth Court of Pennsylvania, is still open and there is no final judgement for that case. The other PUC case is yet to be a final order. Complainant understands there is a 90 day right to appeal to the Supreme Court of the U.S. since there is a June 19, 2012 order, the appeal right expired on or about September 19, 2012.

Since the appeals processes are not exhausted for these cases, complainant disputes and opposes the stated amounts in the ten day notice - \$9,600.12 and total \$10,071.15 and requests the 10 day notice be stayed, vacated or stricken. The 10 day notice is objected to including due process grounds.

5. RELIEF

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

That the 10 day notice be vacated, stricken or stayed, and that PECO be enjoined from taking any action to shut off and/or suspend service at complainant property.

In the alternative, request a stay of shut off / suspension of services and request a payment arrangement and/or substantial reduction of all bills due to financial circumstances and unemployment.

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 N/A

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 MARK MAZZA, 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).

Mark Mazza
(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
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Facsimiles and/or electronic filings of the complaint will not be accepted.

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

Keep a copy of your complaint for your records.

9/1/12

To PUC -

Re: MAZZA v. PECO

Please file the attached complaint

Thank you,

Mike Mazza



0112
0,66
1,53
4,50
\$33

TEN DAY SHUT OFF NOTICE
(AVISO DE SUSPENSIÓN DE SERVICIO EN 10 DIAS)
FOR PECO ENERGY CHARGES ONLY.

Account Number: 7273001005
For Service To: 1271 FARM RD
Date Prepared: July 26, 2012

Past Due Amt: \$9,600.12
New Billing: \$471.03
Total Amount: \$10,071.15

Your Gas/Electric Service May Be Shut Off!

Because your bill is past due, we will shut off the service to 1271 FARM RD on or after 8:00 a.m. on August 9, 2012.

We will NOT shut off your gas/electric service if you do ONE of the following:

- Pay \$9,600.12 in full before August 9, 2012; this includes any amount you owe on your payment plan. This notice is effective for 60 days.
- Show us a paid receipt for the past due amount.
- You may qualify for a payment agreement or special assistance programs. Call 1-888-480-1533 right away to provide us with household income and occupant information to determine your eligibility.
- If you dispute this balance or have other billing questions, please call our office at 1-800-494-4000.

WE MUST RECEIVE YOUR PAYMENT BEFORE THE SHUT-OFF DATE. WE WILL NOT ACCEPT PAYMENTS AT YOUR PROPERTY.

If we shut off your gas/electric service, you may have to pay all of the following before we can turn service on:

- Past Due Amount of \$9,600.12
- Deposit Past Due Amount of \$0.00
- Agreement Unbilled Balance \$0.00
- Total \$9,600.12*

*If your service is shut off, you may be required to pay any additional bills that have become past due to restore your service.

**If your service is shut off, you may have to make substantial payments in order to have your service restored. In addition to any balance owed, you will have to pay a Reconnection charge of between \$70.00 and \$1,700.00. This fee amount is set by PECO's tariff and based on how much work is needed to restore your service. You may also be required to pay a deposit equal to two times your average monthly usage.

MEDICAL EMERGENCY NOTICE

Let us know if you or anyone presently and normally living in your home is seriously ill. WE WILL NOT SHUT OFF YOUR SERVICE during such an illness provided you:

1. Have your licensed physician or nurse practitioner certify by phone and in writing that such an illness exists and that it may be aggravated if your service is shut off, phone certification must be followed by written certification within 7 days.

'AND'

2. Make arrangements to pay this bill. You must provide us with household income and occupant information to determine your payment terms while protected under the medical certification.

IMPORTANT TO KNOW

Before we shut off your utility service please read the back of this notice. You may be eligible for certain protections from shut off.

Atencion ! Este es en mensaje muy importante: Si usted no lo entiende, favor de llama a 1-888-480-1533.

Send payment in the enclosed envelope or pay your bill at an authorized payment location or PECO Energy's Main Office (23rd & Market Streets Philadelphia). To pay by credit card or check by phone, call 1-877-432-9384. The service provider will charge a convenience fee of \$3.50.

See other side for more information



PCO30P

RECEIVED

AUG 14 2012

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

EXHIBIT "2"

RECEIVED

PENNSYLVANIA PUBLIC UTILITY COMMISSION

AUG 14 2012

Formal Complaint Form

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

Please print in ink or type.

1. CUSTOMER (COMPLAINANT) INFORMATION

C-2009-2118230

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

Name MARK MAZZA

Street/P.O. Box 1271 FARM RD. Apt #

City Berwyn State Pa. Zip 19312

County Chester

Daytime Telephone Number Where We Can Contact You: (610) 839-0614

E-mail Address (optional):

Utility Account Number 72730-01005
(from your bill)

COPY

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

STEAM HEAT

GAS

WASTE WATER

WATER

MOTOR CARRIER

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

TELEPHONE
(local, long distance)

RECEIVED
JUL 6 2009
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).

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

PECO rep came to property on 6/23 to shut off service. There was no notice provided by PECO before this date. Called PECO, rep said if I do not pay \$1,000 plus in 15 days they will shut off service. No written notice of

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

I seek an order by the PUC compelling and ordering PECO to give me reasonable payment arrangements in light of my continuing unemployment with limited income of my wife and my UC payments along with expenses beyond our incomes, that the PUC order that services not be terminated due to our inability to pay past due amounts, and fine PECO for attempting to shut off service without any notice to me.

2009

Attached

No shut off program for economically distressed families

and PECO does not care about job loss and difficult economic times, and said they will shut service off despite my efforts to make payments. (\$600.00)

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 No

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 MARK MAZZA, 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).

Mark Mazza
(Signature)

6/30/09
(Date)

Title of authorized employee or officer:

10. FILING

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

If using U.S. Postal Service:

If using overnight delivery service:

Secretary Pennsylvania Public Utility Commission P.O. Box 3265 Harrisburg, PA 17105-3265	Secretary Pennsylvania Public Utility Commission 400 North Street Commonwealth Keystone Building, 2 nd Floor Harrisburg, Pennsylvania 17120
---	--

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.



Emergency and Repairs: 1-800-841-4141. This is the number to call to report power outages, gas leaks or odors and safety hazards related to PECO equipment. For all other business, call 1-800-494-4000.

Page 1

Name: MARK MAZZA
 Service Address: 1271 FARM RD, BERWYN
 Phone Number: 610-889-0614
 Account Number: 72730-01005
 Issue Date: 04/13/2009

General Information

Next scheduled meter reading: May 12, 2009
 Payment Information: PECO Energy, 2301 Market St, Philadelphia, PA, 19101, walk-in business hours Monday through Friday 8:30AM to 5:00PM. For additional payment options, go to www.pECO.com/ehome. If you have any questions or concerns, please call 1-800-494-4000 before the due date.
 To pay by phone, call 1-877-432-9384. (A convenience fee will apply.)
 Si tiene alguna pregunta, favor de llamar al numero 1-800-494-4000 antes de la fecha de vencimiento.

Meter Information

Read Date	Meter Number	Load Type	Reading Type	Meter Reading		Diff	Mult. X	Usage
				Previous	Present			
04/12	020679718	General Service	Total Ccf	6093 ACT	6238 ACT	145	1	145
04/12	105557986	General Service	Tot kWh	50207 ACT	51975 ACT	1768	1	1768
Total Ccf Used						145		
Total kWh Used						1768		

Current Period

<u>Gas Residential Heating Service</u>		Service 03/12/2009 to 04/12/2009 - 31 Days	
Customer charge			\$10.75
Natural Gas Supply Charges	145 Ccf	X \$0.72985	105.83
Distribution Charges	145 Ccf	X 0.36466	52.88
Balancing Service Charges	145 Ccf	X 0.04032	5.85
Gas Cost Adjustment Charges	145 Ccf	X 0.08956	12.99
State Tax Adjustment			0.19
Total current charges			\$188.49

<u>Electric Residential Service</u>		Service 03/12/2009 to 04/12/2009 - 31 Days.	
Customer charge			\$5.18

continued ...

When paying in person, please bring the entire bill.

Return only this portion with your check made payable to PECO. Please write your account number on your check.



- Check here to enroll in Power Pay automatic account debit and complete form on reverse side.
- Check here to pledge a donation to MEAF and complete form on reverse side.

To pay by phone call 1-877-432-9384. A convenience fee will apply.

72730 0100 50000 0000

15248 1 AV 0.324 1024010240038323 004 01 GX#-03 123 04142009
 MARK MAZZA
 1271 FARM RD
 BERWYN, PA 19312-2064



Account Number 72730-01005 Payment Receipt Stan

Payment Amount

PECO ENERGY - PAYMENT PROCESSING
 PO BOX 37629
 PHILADELPHIA, PA 19101



Please pay this amount by 05/05/2009 \$2,014.51

00000455930000000000

727300100500020145191252014518



0041

PAST DUE REMINDER

May 12, 2009

MARK MAZZA
1271 FARM RD
BERWYN PA 19312-2064

Account Number: 7273001005

Dear Customer,

Your account at 1271 FARM RD is past due. Your balance of \$2,010.15 must be paid immediately. Late payment charges will continue to be assessed on your account until the balance is paid in full.

If payment is not made, you may receive notice that PECO intends to terminate your service. We would like to avoid this. PECO offers a number of programs to help customers who are having trouble paying their monthly energy bills. These include payment arrangements, budget billing plans, and other programs.

To discuss your account with a credit representative, please call us at 1-888-480-1533.
Our hours are: Monday - Friday 7:00 a.m. to 6:00 p.m.
Saturday 9:00 a.m. to 1:00 p.m

You may also visit our business office at 2301 Market Street in Philadelphia. Our business office hours are Monday through Friday, from 8:30 a.m. to 5:00 p.m.

To pay your balance by credit/debit card or e-check, please call (877) 432-9384 or visit us online at www.peco.com. A \$3.50 convenience fee will be charged by CheckFree for each credit card/debit card and electronic check transaction.

Thank you,
PECO

When paying in person, please bring the entire bill.

Return only this portion with your check made payable to PECO. Please write your account number on your check.



- Check here to enroll in Power Pay automatic account debit and complete form on reverse side.
- Check here to pledge a donation to MEAF and complete form on reverse side.

Monday through Friday 8:30 AM to 5:00 PM
1-877-432-9384

1803 1 AT 0.357 1888001803001888 007 01 GXBRX 1 05132009
MARK MAZZA
1271 FARM RD
BERWYN PA 19312-2064



Account Number
72730-01005

Payment Receipt Stan

Payment Amount

Please pay this amount by 05/27/2009 **\$2,010.15**



PECO Energy Co.
PO BOX 13439
Philadelphia PA 19162-0439





Emergency and Repair: 1-800-941-1111. This is the number to call to report power outages, gas leaks or odors, and safety hazards related to PECO equipment. For all other business, call 1-800-494-4000.

Page 1

Name: MARK MAZZA
 Service Address: 1271 FARM RD, BERWYN.
 Phone Number: 610-889-0614
 Account Number: 72730-01005
 Issue Date: 05/12/2009

General Information

Next scheduled meter reading: June 11, 2009
 Payment Information: PECO Energy, 2301 Market St, Philadelphia, PA, 19101, walk-in business hours Monday through Friday 8:30AM to 5:00PM. For additional payment options, go to www.peco.com/ehome. If you have any questions or concerns, please call 1-800-494-4000 before the due date.
 To pay by phone, call 1-877-432-9384. (A convenience fee will apply).
 Si tiene alguna pregunta, favor de llamar al numero 1-800-494-4000 antes de la fecha de vencimiento.

Meter Information

Read Date	Meter Number	Load Type	Reading Type	Meter Reading Previous	Meter Reading Present	Diff	Mult X	Usage
05/11	020679718	General Service	Total Ccf	6238 ACT	6294 ACT	56	1	56
05/11	105557986	General Service	Tot kWh	51975 ACT	53552 ACT	1577	1	1577
			Total Ccf Used			56		
			Total kWh Used			1577		

Handwritten: paid \$100.00 + \$3.50

Current Period

Gas Residential Heating Service

Customer charge				Service 04/12/2009 to 05/11/2009 - 29 Days	\$10.75
Natural Gas Supply Charges	56 Ccf	X	\$0.72985		40.87
Distribution Charges	56 Ccf	X	0.36466		20.42
Balancing Service Charges	56 Ccf	X	0.04032		2.26
Gas Cost Adjustment Charges	56 Ccf	X	0.08956		5.02
State Tax Adjustment					0.08
Total current charges					\$79.40

Electric Residential Service

Customer charge				Service 04/12/2009 to 05/11/2009 - 29 Days	\$5.18
-----------------	--	--	--	--	--------

continued ...

When paying in person, please bring the entire bill.

Return only this portion with your check made payable to PECO. Please write your account number on your check.



- Check here to enroll in Power Pay automatic account debit and complete form on reverse side.
- Check here to pledge a donation to NEAF and complete form on reverse side.

To pay by phone call 1-877-432-9384. A convenience fee will apply.

72730 0100 50000 0000

152001 AV 0.335 162000182000035904 063 01 032848 12 05122009
 MARK MAZZA
 1271 FARM RD.
 BERWYN, PA 19312-2064



Account Number 72730-01005 Payment Receipt Stamp

Payment Amount

PECO ENERGY - PAYMENT PROCESSING
 PO BOX 37629
 PHILADELPHIA, PA 19101



Please pay this amount by 06/03/2009 \$2,482.72

00000318500000000000

727300100500024827291542482726





Emergency and Repairs: 800-944-4000. This is the number to call for power outages, gas leaks, odors, and safety hazards related to PECO equipment. For all other business, call 1-800-494-4000.

Page 1.

Name: MARK MAZZA
Service Address: 1271 FARM RD, BERWYN
Phone Number: 610-889-0614
Account Number: 72730-01005
Issue Date: 06/11/2009

General Information

Next scheduled meter reading: July 13, 2009
Payment Information: PECO Energy, 2301 Market St, Philadelphia, PA, 19101, walk-in business hours Monday through Friday 8:30AM to 5:00PM. For additional payment options, go to www.peco.com/ehome. If you have any questions or concerns, please call 1-800-494-4000 before the due date.
To pay by phone, call 1-877-432-9384. (A convenience fee will apply.)
Si tiene alguna pregunta, favor de llamar al numero 1-800-494-4000 antes de la fecha de vencimiento.

Meter Information

Read Date	Meter Number	Load Type	Reading Type	Meter Reading		Diff	Mult X	Usage
				Previous	Present			
06/10	020679718	General Service	Total Ccf	6294 ACT	6369 ACT	75	1	75
06/10	105557986	General Service	Total kWh	53552 ACT	55340 ACT	1788	1	1788
Total Ccf Used						75		
Total kWh Used						1788		

Current Period

<u>Gas Residential Heating Service</u>		Service 05/11/2009 to 06/10/2009 - 30 Days	
Customer charge			\$10.75
Natural Gas Supply Charges	75 Ccf	X \$0.67917	50.94
Distribution Charges	75 Ccf	X 0.36466	27.35
Balancing Service Charges	75 Ccf	X 0.04293	3.22
Gas Cost Adjustment Charges	75 Ccf	X 0.08727	6.55
State Tax Adjustment			0.10
Total current charges			\$98.91

<u>Electric Residential Service</u>		Service 05/11/2009 to 06/10/2009 - 30 Days	
Customer charge			\$5.18

continued ...

When paying in person, please bring the entire bill.

Return only this portion with your check made payable to PECO. Please write your account number on your check.



- Check here to enroll in Power Pay automatic account debit and complete form on reverse side.
- Check here to pledge a donation to MEAF and complete form on reverse side.

To pay by phone call 1-877-432-9384. A convenience fee will apply.

72730 0100 50000 0000.

16603 1 AV 0.335 18603016603037869 075 01 GX&UIC 123 06122009
MARK MAZZA
1271 FARM RD
BERWYN PA 19312-2064

Account Number 72730-01005 Payment Receipt Start

Payment Amount

PECO ENERGY - PAYMENT PROCESSING
PO BOX 37629
PHILADELPHIA, PA 19101

Please pay this amount by 07/06/2009 \$2,431.42

00000396390000031850

727300100500024314291872431428

RECEIVED

AUG 14 2012

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

EXHIBIT "3"

RECEIVED

AUG 14 2012

PENNSYLVANIA PUBLIC UTILITY COMMISSION

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

Formal Complaint Form

2009 JUL 22 AM 9:09
P.U.C.
SECRETARY'S BUREAU

Please print in ink or type.

C-2009-2120401

1. CUSTOMER (COMPLAINANT) INFORMATION

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

Name MARK MAZZA

Street/P.O. Box 1271 FARM RD Apt #

City Berwyn State Pa Zip 19312

County Chester

Daytime Telephone Number Where We Can Contact You: (610) 889-0614

E-mail Address (optional):

Utility Account Number 72730-01005
(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

COPY

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)

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. ²⁰⁰⁹ PECO rep came to property on 6/23 to shut off service.

5. RELIEF

There was no notice provided by PECO before this date. Called PECO, rep said if I do not pay \$1,000 plus in 15 days they will shut off service. No written notice of How do you want your complaint to be resolved? Use additional paper if you need more space.

I seek an order by the PUC compelling and ordering PECO to give me reasonable payment arrangements in light of my continuing unemployment with limited income of my wife and my UC payments along with expenses beyond our incomes, that the PUC order that services not be terminated due to our inability to pay past due amounts, and fine PECO for attempting to shut off service without any notice to me.

Petitioner is unable to pay \$1,000.00 plus and PECO does not care about job loss and difficult economic times, and said they will shut service off, despite my efforts to make payments. (\$600.00)

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 No

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 MARK MARZA, 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).

Mark Marza (Signature) 6/30/09 (Date)

Title of authorized employee or officer

10. FILING

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

If using U.S. Postal Service:

If using overnight delivery service:

Secretary Pennsylvania Public Utility Commission P.O. Box 3265 Harrisburg, PA 17105-3265	Secretary Pennsylvania Public Utility Commission 400 North Street Commonwealth Keystone Building, 2 nd Floor Harrisburg, Pennsylvania 17120
---	--

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.

RECEIVED

AUG 14 2012

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

EXHIBIT "4"

RECEIVED

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

AUG 14 2012

**PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU**

Mark Mazza

v.

PECO Energy Company

:
:
:
:
:

C-2009-2118230

C-2009-2120401

INITIAL DECISION

Before
Angela T. Jones
Administrative Law Judge

HISTORY OF THE PROCEEDING

On July 6, 2009, Mr. Mark Mazza ("Complainant") filed his first formal Complaint ("Complaint One") against PECO Energy Company ("PECO" or "Company" or "Respondent") at Docket Number C-2009-2118230. Complainant alleged that PECO had attempted to terminate service without prior notice. Complainant requested that the Pennsylvania Public Utility Commission ("PUC" or "Commission") direct PECO to provide a reasonable payment arrangement. Complaint One was served on PECO by the Commission Secretary's Bureau on July 10, 2009.

On or about July 22, 2009, Complainant filed a second formal complaint ("Complaint Two") with the Commission against PECO at Docket Number C-2009-2120401. Complaint Two seemed to be the same as Complaint One except documents were not attached to Complaint Two.

On July 30, 2009, Tisheka Williams, Esquire, counsel for PECO, filed an Answer and a Motion to Consolidate the two Complaints. PECO denied that the Complainant is unable to pay his electric and gas service bill. PECO contended that Complainant's payment history

showed late and missed payments. PECO further denied that the Complainant's service was terminated without notice. PECO stated that a 10-day notice on May 26, 2009, and a 72-hour notice on June 1, 2009, were provided to the Complainant. PECO stated that service was terminated for non-payment on June 23, 2009. PECO contended that the termination of service was proper. Regarding the Motion to Consolidate PECO averred that "both actions relate to the same parties, service address, account and raise identical issues of law and facts." Motion to Consolidate at 1.

By Order dated September 16, 2009, pursuant to 52 Pa.Code § 5.81, Administrative Law Judge ("ALJ") Wayne L. Weismandel found that the two Complaints met the criteria for consolidation. ALJ Weismandel ordered that the two Complaints be consolidated.

By Hearing Notice dated December 22, 2009, these consolidated Complaints were scheduled for an Initial Hearing on Friday, March 5, 2010, at 10:00 a.m. with ALJ Cynthia W. Fordham presiding. On January 7, 2010, a Hearing Change Notice was sent changing the presiding officer to ALJ Angela T. Jones and the scheduled time of the hearing to 9:00 a.m.

By Prehearing Order dated January 13, 2010, the undersigned ALJ gave direction as to the proper procedure for this consolidated matter. Among other things, the ALJ gave direction as to how to reschedule the hearing.

By letter received by the undersigned on February 19, 2010, the Complainant requested that this matter be rescheduled. More specifically Complainant stated that he provides child care for his four year old daughter. He suggested that he could have someone else watch his child for him on Tuesday or Thursday; however, the hearing is not scheduled on a Tuesday or Thursday. Complainant stated he needed additional time to make child care arrangements. PECO requested that the evidentiary hearing proceed as scheduled because the request for additional time was not persuasive.

By Order dated February 25, 2010, the continuance was granted. The Order directed that the rescheduled evidentiary hearing be held on a Tuesday or Thursday. By Hearing

Notice dated March 15, 2010, the evidentiary hearing was rescheduled for Tuesday, April 13, 2010.

The evidentiary hearing convened as scheduled. Complainant was present, represented himself and was his own witness. PECO was represented by counsel, Ms. Williams, and presented one witness, Ms. Teresa Ferrier.

The Complainant offered the following four exhibits:

1. Mazza Exhibit 1, PECO Bill 4/13/09;
2. Mazza Exhibit 2, PECO Past Due Reminder, 5/12/09;
3. Mazza Exhibit 3, PECO Bill 5/12/09; and
4. Mazza Exhibit 4, PECO Bill 6/11/09.

All four exhibits were admitted without objection.

Ms. Williams offered two exhibits, PECO Exhibit 1 - Account Statement and PECO Exhibit 2 - Mazza's bill collection history. PECO Exhibit 1 was admitted but PECO Exhibit 2 was objected to because the summary of bill collection actions did not have foundation evidence for support of the summary. The objection was sustained but the hearing was continued to reconvene at a later scheduled date to obtain record evidence regarding the notice of termination to the Complainant. The undersigned ALJ told the parties that the dispute over whether a payment arrangement was warranted for the Complainant was completed and would not be heard at the further hearing.

By Hearing Notice dated April 19, 2010, these consolidated Complaints were scheduled for a Further In-Person Hearing on Tuesday, June 15, 2010.

By letter dated June 3, 2010, Complainant requested that this matter be rescheduled for a minimum of 45 days after June 15, 2010. Complainant specifically stated that he propounded discovery on PECO and had not received a response. Complainant stated that he filed a Motion to Compel against PECO on June 1, 2010. Complainant stated that the discovery

responses would prepare him to cross-examine PECO's witness and without the responses Complainant alleged he is at a disadvantage. Additionally, Complainant provided notice of a case where he is listed as the respondent or defendant in a matter before the Court of Common Pleas of Chester County. The Common Pleas Court matter conflicts with the Commission's Further Hearing on June 15, 2010.

By facsimile dated June 8, 2010, Ms. Williams submitted correspondence that addressed the requests for continuance but addressed a different Docket No. at C-2010-2171324.¹ Ms. Williams stated that the discovery process should have been initiated as soon as possible and acknowledged that the discovery was not propounded until April 27, 2010. Ms. Williams contended that this discovery was untimely and did not meet good cause to further delay the proceeding. Ms. Williams contended that the Common Pleas Court matter was scheduled on May 12, 2010, after the instant matter before the Commission; and thus, the PUC matter should take precedence as it was scheduled first.

Lastly Ms. Williams averred that Complainant has filed new Complaints to avoid collection on current charges. The most recent Complaint was filed on April 21, 2010. These consolidated proceedings were filed in July 2009. PECO contended further delay would be prejudicial to the resolution and collection for services rendered by the Company.

The undersigned ALJ ruled on the continuance request by Order dated June 9, 2010. The ALJ stated that there was no evidence of a filed Motion to Compel answers to discovery. The ALJ found it ironic that while the Complainant could follow procedure for requesting a continuance as evidenced by the June 1st request, the Complainant failed to follow proper procedure for the Motion to Compel.² The ALJ reiterated the proper procedure and stated "time is of the essence" for action on a discovery request.

The undersigned ALJ contacted the Common Pleas Court which consented to excuse the Complainant for June 15, 2010, noting the scheduled PUC matter. The ALJ found

¹ This docket was not assigned to the undersigned ALJ.

² Furthermore, the continuance request demonstrated that the Complainant knew that the undersigned ALJ was the presiding officer of the consolidated dockets.

that because there no longer was a conflict, there was no ground to grant the requested continuance.

The Further In-Person Hearing convened as scheduled on Tuesday, June 15, 2010. The Complainant represented himself and PECO was represented by Ms. Williams. Ms. Williams again called Ms. Ferrier to testify regarding the collection history of the Complainant. PECO presented PECO Exhibit #2 (which was revised from the previously presented exhibit). PECO Exhibit #2 was admitted over the objections of hearsay, lack of record custody and foundation by the Complainant. Complainant submitted Mazza Exhibit 5, after extensive debate over the proposed document, which was a letter to the PUC Secretary regarding Preliminary Objection and Motion to Compel at Docket Nos. C-2010-2171324, C-2009-2118230 and C-2009-2120401.³ Mazza Exhibit 5 was admitted without objection. The record closed on July 6, 2010. This consolidated matter is now ripe for decision.

FINDINGS OF FACT

1. Complainant, Mr. Mazza, receives both gas and electric service as a PECO customer at 1271 Farm Road, Berwyn, PA (“service address”). Tr. 9.
2. On or around June 23, 2009, Complainant had been unemployed for about a year and a half when a truck came to his property to turn off the power. Tr. 9-10.

³ Mazza Exhibit 5 was stamped received by Secretary’s Bureau on June 1, 2010. The ALJ explained to the Complainant that the timestamp may be used as evidence that the proper procedure was not followed, that is,

§ 5.342. Answers or objections to written interrogatories by a party.

(g) *Motion to compel.* Within 10 days of service of an objection to interrogatories, the party submitting the interrogatories may file a motion requesting the presiding officer to dismiss an objection and compel that the interrogatory be answered. **If a motion to compel is not filed within 10 days of service of the objection, the objected to interrogatory will be deemed withdrawn.**

52 Pa.Code § 5.342(g)(Emphasis added). The Complainant must file the Motion to Compel within 10 days of service of the objection by PECO.

3. Complainant explained to the gentleman in the truck that he had no notice of PECO planning to terminate his power. Complainant pleaded with the gentleman not to turn off his power. Tr. 10.

4. Complainant was given a contact number to PECO and was told that he had about \$6,800 in past due bills that needed to be paid within 15 days or the power to the service address would be terminated. Tr. 10.

5. Complainant stated that the person he talked with at the PECO contact number did not address the issue of notice even though Mr. Mazza told the person that he did not receive any notice for termination of his PECO services. Tr. 17.

6. Complainant felt his only recourse was to file a formal Complaint. Tr. 10.

7. Complainant believed the termination was for both electric and gas. Tr. 11.

8. The \$6,800 that was due is for billed electric and gas service. Tr. 11.

9. Complainant became unemployed in the end of October 2007. At that time, Complainant's wife became the sole wage earner of the household. Tr. 12.

10. Complainant remains unemployed. Complainant received unemployment compensation periodically; however, he stopped receiving unemployment in April 2010. Tr. 13.

11. Complainant's household is made up of four people - himself, his wife, an eight year old and a four year old. Tr. 13-14.

12. Complainant is aware that he has had at least two payment arrangements for his PECO services. Tr. 14.

13. Sometime in 2008, when Complainant became unemployed, he made a payment arrangement with PECO. Tr. 14-15.

14. Complainant conceded that he did not maintain the payment arrangement because he continued to be unemployed. Tr. 16.

15. Complainant alleged he did not receive a phone call, or paper, or document placed on the meter, or door or anywhere on his property as notice to terminate his PECO services. His initial notice was a gentleman that came to his property in an unmarked truck on June 23, 2009, to terminate his PECO services. Tr. 16.

16. Complainant stated he did not see anything on his bill to alert him that his PECO services would be terminated. Tr. 17.

17. For the bill issue date of April 13, 2009, the amount due was \$2,014.51. Mazza Exhibit 1 and Tr. 14.

18. For the bill issue date of May 12, 2009, the amount due was \$2,482.72. Mazza Exhibit 3 and Tr. 14.

19. For the bill issue date of June 11, 2009, the amount due was \$2,431.42. Mazza Exhibit 4 and Tr. 14.

20. Complainant stated that the above exhibits were not the only pages received from PECO for each bill. Tr. 19-20.

21. Complainant stated that the other pages of the bills did not contain a notice to shutoff PECO services. Tr. 20.

22. Complainant received a reminder that his account with PECO was past due for payment on May 12, 2009. Mazza Exhibit 2.

23. The current net income of Complainant's wife is \$2,600 or \$2,800 per month. Tr. 25-26.

24. Complainant's wife's annual income is \$42,000 or \$43,800. Tr. 26.
25. Teresa Ferrier is a regulatory assessor at PECO who investigates and reviews formal Complaints filed against the Company with the PUC. Tr. 27-28.
26. Ms. Ferrier has been employed by PECO for 33 years. She has been a regulatory assessor for about 15 years. Tr. 28.
27. Complainant's current balance for PECO services rendered is \$8,623.98. PECO Exhibit 1 and Tr. 29.
28. Ms. Ferrier stated that in her opinion the Complainant's payment history is sporadic, in that a payment is not received each and every month. Tr. 34 and PECO Exhibit 1.
29. PECO entered into a payment agreement with the Complainant on May 23, 2008, on a balance due at that time of \$2,503.89. The Complainant agreed to pay a certain amount down, installments of \$104.33 per month and current billed charges. Tr. 34.
30. The Complainant defaulted on the payment agreement because PECO did not receive the requested payment of \$626.99 by July 2, 2008. Tr. 34.
31. PECO received a payment of \$600 on November 17, 2008. Tr. 34.
32. As a result of a formal Complaint filed by the Complainant, PECO entered into another payment agreement on December 13, 2009. The terms of the agreement were to pay the budget bill in the amount of \$568 per month plus a monthly payment of \$145.35 toward the outstanding balance of \$5,232.62. The agreement was a Company settlement of the formal Complaint. Tr. 35.
33. On February 24, 2010, Complainant defaulted on the agreement. Tr. 35.
34. The Complainant has never received a Commission payment agreement. Tr. 35.

35. The first 10-day termination notice of PECO services was mailed on April 10, 2008. Tr. 77 and PECO Exhibit 2.

36. The 10-day notice referenced PECO account number 72730-01005 which is the account that corresponds to the Complainant's service address. Tr. 77 and PECO Exhibit 2.

37. On April 15, 2008, a telephone attempt was made to personally notify the Complainant of the proposed termination of PECO services (72-hour notice). Tr. 77-78 and PECO Exhibit 2.

38. A telephone message was left at Complainant's service address on April 15th and 16th, 2008, regarding PECO services to the Complainant's service address. Tr. 84 and PECO Exhibit 2.

39. The 10-day notice is sent through PECO's billing system. The notice is generated by computer and then sent by an outside vendor used by the Company. Tr. 78.

40. PECO's system updates upon receiving the data from the vendor that performs the notice. Tr. 100 and PECO Exhibit 2.

41. Regarding the termination in July 2008, the 10-day notice was mailed on July 7, 2008. Tr. 79 and PECO Exhibit 2.

42. The first 72-hour notice attempt was made on July 11, 2008. The Company got the Complainant's answering machine but then the phone got disconnected.

43. A second attempt for a 72-hour notice of termination was made on July 14, 2008. A telephone message was left on Complainant's answering machine to notify him of the proposed termination of PECO service. Tr. 80, 88 and PECO Exhibit 2.

44. Further collection action on the Complainant's account was a 10-day notice mailed on May 26, 2009. Tr. 80 and PECO Exhibit 2.

45. The first 72-hour notice attempt was made on June 2, 2009, and the second attempt was made on June 3, 2009. A telephone message was left on Complainant's answering machine on both attempts to notify the Complainant of the proposed termination of PECO service. Tr. 80-81 and PECO Exhibit 2.

46. Still further collection activity occurred on March 26, 2010, when a 10-day notice was mailed. Tr. 81 and PECO Exhibit 2.

47. A 72-hour notice attempt was made on March 31, 2010, which followed the March 26th collection activity. A telephone message was left on Complainant's answering machine to notify him of the proposed termination of PECO service. Tr. 81 and PECO Exhibit 2.

48. PECO does not keep the actual notices mailed for termination. The notices are mailed through the Company's electronic system which records that the notices were sent. Tr. 81-82, 83.

49. There are instances when PECO leaves a message on a customer's telephone and no return call from the customer to PECO is anticipated or warranted. Tr. 85-86.

50. PECO follows a script when calling a customer for the 72-hour notice before termination of service. Tr. 86.

51. PECO's procedure for 72-hour notification is to perform a second attempt of the 72-hour notice, if the first attempt does not produce contact with a live ratepayer or responsible adult occupant at the service address. Tr. 101-02 and PECO Exhibit 2.

52. Complainant had a letter to PUC Secretary Chiavetta as evidence of a Motion to Compel discovery responses at Docket Nos. C-2009-2118230 and C-2009-2120401 filed with the Secretary. Mazza Exhibit 5.

DISCUSSION

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.

The issues in this proceeding are whether the Complainant satisfied his burden of proof regarding the request for a payment arrangement and also the allegation that he received no notice of termination of PECO services.

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).

Request for Payment Agreement

The record shows the Complainant has defaulted on two Company initiated payment agreements. Tr. 35. Section 1405(d) states, "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. ..." 66

Pa.C.S. § 1405(d). However, the Complainant has not had a payment agreement directed by the PUC. Tr. 35.

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

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

66 Pa.C.S. § 1405(a).

Although the Complainant has defaulted on two previous payment agreements, they were set forth by the Company. The Commission has the authority to direct a payment arrangement by statute and has not done so for this Complainant. Since the Complainant has not had a payment arrangement under the authority of the PUC, the Commission may exercise its authority to put a payment arrangement in place. Although Complainant's payment history is characterized by the Company's witness as sporadic, Complainant made payments of either \$500 or \$600 every other month. PECO Exhibit 1. While Complainant's conduct is not stellar, the Commission can exercise its authority to provide a payment arrangement.

The record shows that the household income of the Complainant is \$42,000 to \$43,800. Tr. 26. The size of Complainant's household is four persons, two adults and two children. Tr. 13-14. The outstanding balance of the Complainant is \$8,623.98. PECO Exhibit 1 and Tr. 29.

Regarding the length of a payment agreement the Public Utility Code states,

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 month for customers with a gross monthly household income level exceeding 300% of the Federal poverty level.

66 Pa.C.S. § 1405(b).

Complainant's annual household income of \$42,000 to \$43,800 for a family of four exceeds 175% but is less than 200% of the current poverty income guidelines. *See*, Federal Register, Vol. 74, No. 14, (January 23, 2009), at 4199-4201.⁴ Pursuant to 66 Pa.C.S. § 1405(b)(2), Complainant's payment agreement can be no more than two years or 24 months. In compliance with 66 Pa.C.S. § 1405(b)(2), Complainant is required to pay his monthly budget bill, plus an amount equal to one twenty-fourth (1/24th) of the balance accrued on his account. These payment terms are to begin with the first bill following the Commission's final Order in this case. If Complainant fails to keep this payment schedule, PECO is authorized to suspend or terminate the Complainant's gas and electric services in accordance with the Commission's statute and regulations. If Complainant should default on this payment agreement, PECO should initiate the process to terminate Complainant's services.

⁴ "Congress has taken action to keep the 2009 poverty guidelines in effect until at least May 31, 2010. Congressional actions on this matter have been in response to a decrease in the annual average Consumer Price Index (CPI-U) for 2009, projected during 2009 and announced on January 15, 2010. In the absence of legislative change, this decrease - the first since the poverty guidelines began to be issued in 1965 - would have required HHS to issue 2010 poverty guidelines that were lower than the 2009 poverty guidelines..." See hyperlink at <http://aspe.hhs.gov/poverty/index.shtml> (Emphasis added).

Notice to Terminate Services

The Complainant does not appear to dispute that PECO was authorized to terminate his services. Pursuant to Section 56.81 of the Commission's regulations,

§ 56.81. Authorized termination of service.

Utility service to a dwelling may be terminated for one or more of the following reasons:

- (1) Nonpayment of an undisputed delinquent account.
- (2) Failure to post a deposit, provide a guarantee or establish credit.
- (3) Unreasonable refusal to permit access to meters, service connections and other property of the utility for the purpose of maintenance, repair or meter reading.
- (4) Unauthorized use of the utility service delivered on or about the affected dwelling.
- (5) Failure to comply with the material terms of a settlement or payment agreement.
- (6) Fraud or material misrepresentation of identity for the purpose of obtaining utility service.
- (7) Tampering with meters or other utility equipment.
- (8) Violating tariff provisions on file with the Commission so as to endanger the safety of a person or the integrity of the energy delivery system of the utility.

52 Pa.Code § 56.81. Because the Complainant conceded that he had two payment agreements upon which he defaulted, at a minimum, 52 Pa.Code § 56.81(5) is applicable and actions toward termination of PECO services were warranted.

Pursuant to Commission regulations,

§ 56.91. General notice provisions.

Prior to a termination of service, the utility shall mail or deliver written notice to the ratepayer at least 10 days prior to the date of the proposed termination. In the event of any taking or acceptance of utility service without the knowledge or approval of the utility, other than unauthorized use of service as defined in § 56.2 (relating

to definitions), the utility shall comply with §§ 56.93-56.97, but need not otherwise provide notice 10 days prior to termination.

* * *

§ 56.93. Personal contact.

Except when authorized by § 56.71, § 56.72 or §-56.98 (relating to interruption of service; discontinuation of service; and exception for terminations based on occurrences harmful to person or property), a utility may not interrupt, discontinue or terminate service without personally contacting the ratepayer or a responsible adult occupant at least 3 days prior to the interruption, discontinuance or termination, in addition to providing other notice as specified by the properly filed tariff of the utility or as required by this chapter or other Commission directive. For purposes of this section, "personal contact" means:

- (1) Contacting the ratepayer or responsible adult occupant in person or by telephone.
- (2) Contacting another person whom the ratepayer has designated to receive a copy of a notice of termination, other than a member or employee of the Commission.
- (3) If the ratepayer has not made the designation noted in paragraph (2), contacting a community interest group or other entity, including a local police department, which previously shall have agreed to receive a copy of the notice of termination and to attempt to contact the ratepayer.
- (4) If the ratepayer has not made the designation noted in paragraph (2) and if there is no community interest group or other entity which previously has agreed to receive a copy of the notice of termination, contacting the Commission in writing.

* * *

§ 56.94. Procedures immediately prior to termination.

Immediately preceding the termination of service, a utility employee, who may be the utility employee designated to perform the termination, shall attempt to make personal contact with a responsible person at the residence of the ratepayer and shall attempt to make personal contact with a responsible person at the affected dwelling.

(1) *Termination prohibited in certain cases.* If evidence is presented which indicates that payment has been made, a serious illness or medical condition exists, or a dispute or complaint is properly pending or if the employee is authorized to receive payment and payment in full is tendered in any reasonable manner, then termination shall not occur. However, if the disputing party does not pay all undisputed portions of the bill, termination may occur.

(2) *Methods of payment.* Payment in any reasonable manner includes payment by personal check unless the ratepayer within the past year has tendered a check which has been returned for insufficient funds or for which payment has been stopped.

52 Pa.Code §§ 56.91, 56.93 and 56.94.

Complainant alleged that he did not receive notice to terminate his service prior to a PECO employee at his service address ready to terminate service on June 23, 2009. Tr. 9-10. Complainant's testimony however, is not that PECO terminated service at that point, but that PECO requested payment within 15 days of June 23, 2009, or Complainant's services would be terminated. Tr. 10.

PECO provided evidence of a 10-day notice relevant to the dispute sent to the service address of Complainant on May 26, 2009.⁵ Tr. 80 and PECO Exhibit 2. The 10-day notice complies with 52 Pa.Code § 56.91 regarding general notice of termination. The first attempt of a 72-hour notice was made on June 2, 2009, and a second attempt was made on June 3, 2009. Tr. 80-81 and PECO Exhibit 2. Both 72-hour notice attempts were by telephone call with messages left on an answering machine. Tr. 81 and PECO Exhibit 2. The 72-hour notices comply with the Commission regulations at 52 Pa.Code § 56.93(1) regarding personal contact. The PECO witness explained that the 10-day notice is generated through a computer billing system, noted on the computer system and mailed by an outside vendor of the Company. Tr. 78, 81-83.

⁵ PECO also provided notices subsequent to the disputed attempted termination; however, Complainant did not challenge termination notice subsequent to the attempt made by PECO on June 23, 2009.

It is important to note that PECO previously provided a 10-day notice in April 2008 and July 2008 to Complainant's service address. On both occurrences in April and July 2008, PECO left messages on Complainant's answering machine to notify him of the proposed termination of service. Tr. 80, 84, 88 and PECO Exhibit 2. This is evidence that Complainant had gone through the practice and procedure with the Company regarding notification before termination of service prior to this disputed matter. Thus, Complainant was no stranger to the procedure that he is contesting. The record is silent as to whether the procedures in April and July 2008 were resolved by termination or by another solution.

Furthermore, according to Complainant's own testimony, PECO complied with 52 Pa.Code § 56.94 in that the Company made personal contact with a responsible ratepayer on June 23, 2009. Tr. 10. The Company went beyond the regulations and extended another fifteen days to pay for services rendered. Complainant admitted that he filed the instant consolidated Complaints rather than meet the offer extended by the Company. Tr. 10.

PECO adequately rebutted the allegation by Complainant that no notice was received regarding termination of services at his service address prior to June 23, 2009. Complainant has not provided any evidence to refute or rebut the evidence provided by PECO that notices were delivered by mail and phone in compliance with Commission regulations. The record evidence does not support a finding that PECO failed to comply with PUC statute and procedure to provide notice of termination to the Complainant. Complainant has failed to sustain his burden of proof.

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.

4. The Commission can grant payment arrangements to customers that have not received a Commission payment arrangement previously. 66 Pa. C.S. § 1405(a) and (b).

5. Complainant has sustained his burden of proof regarding his request for a payment arrangement.

6. Complainant has not sustained his burden of proof regarding no notice provided for termination of services.

ORDER

THEREFORE,

IT IS ORDERED:

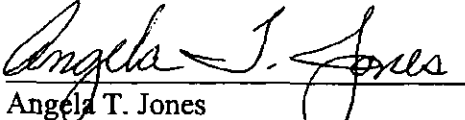
1. That the formal Complaints filed by Mark Mazza against PECO Energy Company at Docket Nos. C-2009-2118230 and C-2009-2120401 are sustained, in part and denied, in part.

2. That Mark Mazza shall make monthly payments consisting of his current bill plus one twenty-fourth ($1/24^{\text{th}}$) of the balance accrued on his account, beginning with the first billing due date following the entry of a final Commission Order in this case.

3. That if Mark Mazza does not keep the payment schedule stated in this Order, PECO Energy Company is authorized to suspend or terminate his PECO services in accordance with the Commission's statute and regulations.

4. That the Secretary's Bureau shall mark the record at Docket Nos. C-2009-2118230 and C-2009-2120401 closed.

Date: July 26, 2010


Angela T. Jones
Administrative Law Judge

RECEIVED

AUG 14 2012

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

EXHIBIT "5"

PENNSYLVANIA
PUBLIC UTILITY COMMISSION
Harrisburg, PA 17105-3265

Mark Mazza :
 :
 v. : C-2009-2118230
 : C-2009-2120401
 PECO Energy Company :

FINAL ORDER

In accordance with the provisions of Section 332(h) of the Public Utility Code, 66 Pa. C.S. §332(h), the decision of Administrative Law Judge Angela T. Jones dated July 26, 2010, has become final without further Commission action;

THEREFORE,

IT IS ORDERED:

1. That the formal Complaints filed by Mark Mazza against PECO Energy Company at Docket Nos. C-2009-2118230 and C-2009-2120401 are sustained, in part and denied, in part.
2. That Mark Mazza shall make monthly payments consisting of his current bill plus one twenty-fourth (1/24th) of the balance accrued on his account, beginning with the first billing due date following the entry of a final Commission Order in this case.
3. That if Mark Mazza does not keep the payment schedule stated in this Order, PECO Energy Company is authorized to suspend or terminate his PECO services in accordance with the Commission's statute and regulations.
4. That the Secretary's Bureau shall mark the record at Docket Nos. C-2009-2118230 and C-2009-2120401 closed.

BY THE COMMISSION,



Rosemary Chiavetta .
Secretary

RECEIVED

AUG 14 2012

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

(SEAL)

ORDER ENTERED: October 1, 2010

PECO ENERGY
EXHIBIT 5

RECEIVED

AUG 14 2012

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

EXHIBIT "6"

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Mark Mazza,

Petitioner

v.

Public Utility Commission,

Respondent

:
:
:
: No. 2606 C.D. 2010
:
:
:

PER CURIAM

ORDER

AND NOW, this 4th day of January, 2012, the Pennsylvania Public Utility Commission's Order, dated October 1, 2010, at C-2009-2118230 and C-2009-2120401, is affirmed.

RECEIVED

AUG 14 2012

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

Certified from the Record

JAN - 4 2012

and Order Exit

PECO ENERGY
EXHIBIT 6

EXHIBIT "7"

RECEIVED

AUG 14 2012

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

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 MARK MAZZA

Street/P.O. Box 1271 FARM RD. Apt #

City BERWYN State PA Zip 19312

County Chester

Daytime Telephone Number Where We Can Contact You: (610) 995-0614

E-mail Address (optional):

Utility Account Number 7273001005 (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)

[X] ELECTRIC

[] STEAM HEAT

[X] GAS

[] WASTE WATER

[] WATER

[] MOTOR CARRIER (e.g., taxi, moving company, limousine)

[] TELEPHONE (local, long distance)

RECEIVED 2010 APR 19 AM 11:00 SECRETARY'S BUREAU PA PUBLIC UTILITY COMMISSION

RECEIVED

AUG 14 2012

Var \$ 600.00
Munich \$ 500

received 10 day shut off March 26th
754.83
April 9th effective date
\$ 516.08 payment → April 19th

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):

\$ 952.37
suspended charges

\$ 7727.46
BA

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.

April 15th called

PUC complaint pending. Received 10 day shut off notice. No legal notice or basis provided by PECO 4/10/10 - no legal basis provided, nor willing to do payment arrangement or agreement.

Seek fine or sanctions against PECO, as PUC complaint pending and prior to receipt of shut off notice I paid what I could and payments were late. The shut off notice provides no legal basis or sufficient notice why PECO is now trying to force payment or order shut off.

In the alternative, due to continued unemployment (2 1/2 yrs) and good faith efforts to pay, request PECO be compelled to enter into a payment arrangement or agreement. Also, request consideration PECO be ordered to reduce the amounts due to a lump sum compatible to my severe financial situation. PECO's programs for payment agreements and special assistance are discriminatory and unfair.

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 MARK MAZZA, 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).

Mr. Mazza (Signature) 4/12/10 (Date)

Title of authorized employee or officer

10. FILING

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

If using U.S. Postal Service:

If using overnight delivery service:

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

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

Keep a copy of your complaint for your records.



0112

TEN DAY SHUT OFF NOTICE
(AVISO DE SUSPENSION DE SERVICIO EN 10 DIAS)
FOR PECO ENERGY CHARGES ONLY.

Account Number: 7273001005
For Service To: 1271 FARM RD
Date Prepared: March 26, 2010

Past Due Amt: \$754.83
New Billing: \$556.08
Total Amount: \$1,310.91

Your Gas/Electric Service May Be Shut Off

Because your bill is past due, we will shut off the service to 1271 FARM RD on or after 8:00 a.m. on April 9, 2010.

We will NOT shut off your gas/electric service if you do ONE of the following:

- Pay \$754.83 in full before April 9, 2010, this includes any amount you owe on your payment plan. This notice is effective for 60 days.
- Show us a paid receipt for the past due amount.
- You may qualify for a payment agreement or special assistance programs. Call 1-888-480-1533 right away to provide us with household income and occupant information to determine your eligibility.
- If you dispute this balance or have other billing questions, please call our office at 1-800-494-4000.

WE MUST RECEIVE YOUR PAYMENT BEFORE THE SHUT-OFF DATE. WE WILL NOT ACCEPT PAYMENTS AT YOUR PROPERTY.

If we shut off your gas/electric service, you may have to pay all of the following before we can turn service on:

- Past Due Amount of **\$754.83**
- Deposit Past Due Amount of **\$0.00**
- Agreement Unbilled Balance **\$0.00**
- Total **\$754.83***

Credit
Debit

Called PECO - 4/11
PECO rec'd - 1/2nd
puc complaint still pending!

PC024P

*If your service is shut off, you may be required to pay any additional bills that have become past due to restore your service.

**If your service is shut off, you may have to make substantial payments in order to have your service restored. In addition to any balance owed, you will have to pay a Reconnection charge of between \$70.00 and \$1,700.00. This fee amount is set by PECO's tariff and based on how much work is needed to restore your service. You may also be required to pay a deposit equal to two times your average monthly usage.

MEDICAL EMERGENCY NOTICE

Let us know if you or anyone presently and normally living in your home is seriously ill. WE WILL NOT SHUT OFF YOUR SERVICE during such an illness provided you:

1. Have your licensed physician or nurse practitioner certify by phone and in writing that such an illness exists and that it may be aggravated if your service is shut off, phone certification must be followed by written certification within 7 days.

'AND'

2. Make arrangements to pay this bill. You must provide us with household income and occupant information to determine your payment terms while protected under the medical certification.

IMPORTANT TO KNOW

Before we shut off your utility service please read the back of this notice. You may be eligible for certain protections from shut off.

Atencion | Este es en mensaje muy importante. Si usted no lo entiende, favor de llama a 1-888-480-1533.

Send payment in the enclosed envelope or pay your bill at an authorized payment location or PECO Energy's Main Office (23rd & Market Streets Philadelphia). To pay by credit card or check by phone, call 1-877-432-9384. The service provider will charge a convenience fee of \$3.50.

See other side for more information



When paying in person, please bring the entire bill

Return only this portion with your check made payable to PECO. Please write your account number on your check.



Check here to enroll in Power Pay automatic account debit and complete form on reverse side.

Monday through Friday 8:30 a.m. to 5:00 p.m.

tariff and based on how much work is needed to restore your service. You may also be required to pay a deposit equal to your average monthly usage.

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- 'AND'**
2. Make arrangements to pay this bill. You must provide us with household income and occupant information to determine your payment terms while protected under the medical certification.

IMPORTANT TO KNOW

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Atencion ! Este es un mensaje muy importante. Si usted no lo entiende, favor de llama a 1-888-480-1533.

Send payment in the enclosed envelope or pay your bill at an authorized payment location or PECO Energy's Main Office (23rd & Market Streets Philadelphia). To pay by credit card or check by phone, call 1-877-432-9384. The service provider will charge a convenience fee of \$3.50.

See other side for more information

When paying in person, please bring the entire bill

Return only this portion with your check made payable to PECO. Please write your account number on your check.



- Check here to enroll in Power Pay automatic account debit and complete form on reverse side.
- Check here to pledge a donation to MEAF and complete form on reverse side.

Monday through Friday 8:30 a.m. to 5:00 p.m.
1-888-480-1533

1128 1 AT 0.357 1128001128001128 004 01 GRAC08 1 02272010
MARK MAZZA
1271 FARM RD
BERWYN PA 19312-2064



Account Number **72730-01005** Payment Receipt Sta

Payment Amount

Please pay this amount immediately. **\$754.83**



PECO Energy Co.
PO BOX 13439
Philadelphia PA 19162-0439



72730010050000000000009900000000

0000000000001

If you have questions or need more information, please call us today at 1-888-480-1533. After you talk with us, if you are not satisfied you may file a complaint with the Public Utility Commission (PUC). The PUC may delay the shut off if you file the complaint before the shut off date. To contact them call (800) 692-7380 or write to: Pennsylvania Public Utility Commission, Box 3265, Harrisburg, PA 17105-3265.

WINTER SHUT-OFF PROVISIONS (between December 1 - March 31)

- **Contact us BEFORE the shut off date** to give us household income & occupant information to see if you qualify for any assistance programs.
- If your income is below 250% of the federal poverty guideline, we must first ask the PUC for permission to shut off your service. Add together the monthly income of the adults in your household. If that number is the same or less than the amount listed in chart below for your household size, call us immediately at 1-888-480-1533. You will be required to provide us with proof of your income.

Monthly Income at 250% of Federal Poverty Level:

Household Size	1	2	3	4
Monthly Income	\$2256	\$3035	\$3815	\$4594

Add \$779 for each additional household member.

- If we shut off your residential service during the winter months (between Dec. 1 – Mar. 31) we will turn your service on within 24 hours of your meeting all requirements/conditions to have service reconnected. Where street digging is required it may take up to 7 days to turn the service back on.

IMPORTANT TO KNOW – BEFORE WE SHUT OFF YOUR UTILITY SERVICE

- If you currently have a valid Protection From Abuse order from a court, there are some additional protections available to you. Call us immediately at 1-888-480-1533. (You will be required to provide us with a copy of the order.)
- You may be eligible for a payment agreement or special assistance programs. Call 1-888-480-1533 right away to provide us with household income and occupant information. Documentation of your income will be required, such as pay stubs or tax documents.
- If your landlord pays your utility bill: You have certain legal protections. Call us at 1-800-494-4000.
- If you have trouble understanding or speaking English please call us at 1-888-480-1533.
- If you have a disability or need help understanding this notice, please call us at 1-800-494-4000.
- If your service is shut off, you will have to pay more than the amount on the front of this notice to have your service turned back on. You may have to pay any additional bills that have become past due.
- All adult occupants of the premise whose names are on the mortgage, deed, or lease are considered the 'customer' and are responsible for payment of this bill.
- If service is shut off, ANY adult occupant who has been living at the premise may have to pay all or portions of this bill to have service restored.
- If your service is shut off, you must contact us after your payment has been made to be sure you've met all conditions to have the service turned back on and to arrange access to your premises.
- If we shut off your service during the NON winter months (between Apr. 1 – Nov. 30) we will turn your service on within 3 days of your meeting all requirements/conditions to have service reconnected. Where street digging is required it may take up to 7 days to turn the service back on.

Atencion ! Este es un mensaje muy importante. Si usted no lo entiende, favor de llamar a 1-888-480-1533



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Label 107R, January 2008

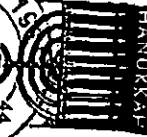
Label 107R, January 2008

Label 107R, January 2008

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APR 12, 10
AMOUNT

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BER0002719-03

Any amount of mailable material may be enclosed, as long as the envelope is not modified, and the contents are entirely confined within the envelope with the adhesive provided as the means of closure.

INTERNATIONAL RESTRICTIONS APPLY:

4-POUND WEIGHT LIMIT ON INTERNATIONAL APPLIES

Customs forms are required. Consult the International Mail Manual (IMM) at pe.usps.gov or ask a retail associate for details.

From: /Expéditeur:

MARK MAZZA
1271 Farm Rd.
Berwyn, Pa. 19312

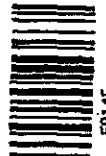
To: /Destinataire:

Secretary
Pennsylvania Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105-3265

Country of Destination: /Pays de destination:



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PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

EXHIBIT "8"

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AUG 14 2012

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION^{PA} PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU**

Mark Mazza :
 :
 v. : C-2010-2171324
 :
 PECO Energy Company :

**INITIAL DECISION SUSTAINING PRELIMINARY OBJECTIONS AND
DISMISSING COMPLAINT**

Before
David A. Salapa
Administrative Law Judge

HISTORY OF THE PROCEEDING

On April 19, 2010, Mark Mazza (Complainant) filed a complaint with the Pennsylvania Public Utility Commission (Commission) against PECO Energy Company (Respondent). I will refer to this complaint throughout this decision as Complaint 3. Complaint 3 alleges that the Complainant has received a notice that his utility service is being terminated. Complaint 3 further states "PUC complaint pending" and alleges that the ten day shut off notice fails to provide a basis for the shut off notice. According to Complaint 3, the Complainant contacted the Respondent but the Respondent provided no explanation for the shut off notice and refused to enter into a payment arrangement with the Complainant.

Complaint 3 requests that the Commission impose sanctions against the Respondent since the Complainant has a complaint pending before the Commission and the Respondent failed to provide an explanation for the shut off notice. Alternatively, Complaint 3 requests that the Commission direct the Respondent to enter into a payment arrangement with the Complainant due to the Complainant's continued unemployment and his good faith efforts to make payments on his account.

The Respondent filed an answer and preliminary objections on May 10, 2010. The answer admits that the Respondent provides utility service to the Complainant at the address stated on the complaint. The answer denies that the Complainant is unable to pay his gas and electric bills. According to the answer, the Complainant has a history of late and missed payments. The answer asserts that the Complainant repeatedly files complaints in an effort to maintain utility service without payment. The answer contends that the Complainant has not demonstrated good faith and should be precluded from filing additional complaints.

The answer states that the Commission served a complaint on the Respondent at Docket No. C-2009-2118230 on July 10, 2009. I will refer to this complaint throughout this decision as Complaint 1. According to the answer, Complaint 1 alleged improper termination and requested a payment arrangement.

The answer states that the Commission served a complaint on the Respondent at Docket No. C-2009-212041 on July 22, 2009. I will refer to this complaint throughout this decision as Complaint 2. According to the answer, Complaint 2 raised the same issues raised in Complaint 1. Complaint 2 alleged improper termination and requested a payment arrangement.

The answer alleges that Complaint 1 and Complaint 2 were consolidated for hearing. An initial hearing was held on April 13, 2010 where the Respondent presented exhibits regarding the Complainant's account activity and collection history. When the Complainant objected to the admission of the collection history, the presiding ALJ continued the hearing to June 15, 2010 in order to allow the Respondent to provide a foundation for the collection history.

According to the answer, the Commission served Complaint 3 on the Respondent on April 21, 2010. Complaint 3 raises the same issues raised in Complaints 1 and 2, according to the answer.

The answer argues that the Complainant should be barred from filing additional complaints regarding his outstanding balance until he pays the outstanding amount due on his account. He answer alleges that the Complainant is using the Commission's complaint process to avoid payment and maintain his utility service. The answer requests that the Commission dismiss the complaint.

The preliminary objections reiterate the assertions set forth in the answer that the Complainant has previously filed Complaints 1 and 2 raising identical issues. The preliminary objections allege that Complaint 3 simply raises the same issues set forth in Complaints 1 and 2. The preliminary objections assert that Complaint 3 should be dismissed due to the pendency of the prior proceeding. The preliminary objections request that the Commission dismiss the complaint.

On June 1, 2010, the Complainant filed a response to the Respondent's preliminary objections. The Complainant alleges that Complaint 3 involves the termination notice the Respondent sent to him during the pendency of the prior proceedings. According to the Complainant, Complaint 3 involves new issues and facts different from the prior complaints. The Complainant asserts that the issue in this complaint is whether the Respondent can issue a termination notice and terminate service while the prior complaints are pending and not yet adjudicated. The response requests that the Commission deny the preliminary objections.

By notice dated April 15, 2011, the Commission notified the parties that it had assigned the case to me as motion judge. The preliminary objections are ready for decision. For the reasons set forth below, I will sustain the preliminary objections and dismiss the complaint.

FINDINGS OF FACT

1. The Complainant in this case is Mark Mazza.
2. The Respondent in this case is PECO Energy Company.
3. On April 19, 2010, the Complainant filed a complaint with the Commission against the Respondent.
4. The Respondent filed an answer on May 10, 2010.
5. On May 10, 2010, the Respondent filed preliminary objections.
6. The Complainant filed an answer to the Respondent's preliminary objections on June 1, 2010.

DISCUSSION

The Commission's Rules of Practice and Procedure permit parties to file preliminary objections. The grounds for preliminary objections are limited to those set forth in 52 Pa Code §5.101(a) as follows:

- (1) Lack of Commission jurisdiction or improper service of the pleading initiating the proceeding.
- (2) Failure of a pleading to conform to this chapter or the inclusion of scandalous or impertinent matter.
- (3) Insufficient specificity of a pleading.
- (4) Legal insufficiency of a pleading.
- (5) Lack of capacity to sue, nonjoinder of a necessary party or misjoinder of a cause of action.

(6) Pendency of a prior proceeding or agreement for alternative dispute resolution.

Here the Respondent's preliminary objections assert that Complaint 3 should be dismissed due to the pendency of Complaints 1 and 2 pursuant to 52 Pa. Code §5.101(6). I agree.

Commission preliminary objection practice is analogous to Pennsylvania civil practice regarding preliminary objections. Equitable Small Transportation Intervenors v. Equitable Gas Company, 1994 Pa PUC LEXIS 69, Docket No. C-00935435 (July 18, 1994) Preliminary objections in civil practice requesting dismissal of a pleading will be granted only where the right to relief is clearly warranted and free from doubt. Interstate Traveller Services, Inc. v. Pa. Dept. of Environment Resources, 406 A.2d 1020 (Pa. 1979); Rivera v. Philadelphia Theological Seminary of St. Charles Borromeo, Inc., 595 A.2d 172 (Pa. Super. 1991) The Commission follows this standard. Montague v. Philadelphia Electric Company, 66 Pa. PUC 24 (1988)

The Commission may not rely upon the factual assertions of the moving party but must accept as true for purposes of disposing of the motion all well pleaded, material facts of the nonmoving party, as well as every inference from those facts. County of Allegheny v. Commonwealth of Pennsylvania, 490 A. 2d 402 (Pa. 1985); Commonwealth of Pennsylvania v. Bell Telephone Co. of Pa., 551 A.2d 602 (Pa. Cmwlth. 1988) The Commission must view the complaint in this case in the light most favorable to the Complainant and should dismiss the complaint only if it appears that the Complainant would not be entitled to relief under any circumstances as a matter of law. Equitable Small Transportation Intervenors v. Equitable Gas Company, 1994 Pa PUC LEXIS 69, Docket No. C-00935435 (July 18, 1994)

The Commission regulation at 52 Pa. Code §5.21(a) states that a person may file a formal complaint claiming violation of a statute that the Commission has jurisdiction to administer. The regulation at 52 Pa. Code §5.21(d) authorizes the

Commission to dismiss a complaint if a hearing is not necessary and authorizes preliminary objections to be filed in response to a complaint.

The regulation at 52 Pa. Code §5.101(a)(6) permits the filing of a preliminary objection to dismiss a pleading due to the pendency of a prior proceeding. The provision at 52 Pa. Code §5.101(a)(6) serves judicial economy by avoiding a hearing where no factual dispute exists. If no factual issue pertinent to the resolution of a case exists, a hearing is unnecessary. 66 Pa. C.S. §703(a); Lehigh Valley Power Committee v. Pennsylvania Pub. Util. Comm'n., 563 A.2d 557 (Pa. Cmwlth. 1989); Lehigh Valley Power Committee v. Pennsylvania Pub. Util. Comm'n., 563 A.2d 548 (Pa. Cmwlth. 1989); S.M.E. Bessemer Cement, Inc. v. Pennsylvania Pub. Util. Comm'n., 540 A.2d 1006 (Pa. Cmwlth. 1988); White Oak Borough Authority v. Pennsylvania Pub. Util. Comm'n., 103 A.2d 502 (Pa. Super. 1954)

The purposes of recognizing the doctrine of *lis pendens* are to prevent the respondent from having to defend several suits on the same cause of action at the same time, to prevent the squandering of scarce judicial resources on duplicative actions, to maintain an orderly legal process, and to avoid inconsistent decisions on the same causes of action. “The law is quite clear that *lis pendens* is a valid defense only when the parties, the causes of action and the relief sought are the same in both actions (citations omitted).” Procacina v. Susen, 301 Pa. Super. 392, 394, 447 A.2d 1023, 1025 (1982).

The three-pronged identity test “requires more than a mere allegation of a pending suit; it requires proof that the prior case is the same, the parties are substantially the same, and the relief requested is the same (citations omitted).” Hillgartner v. Port Authority of Allegheny Cty., 936 A.2d 131, 137 (Pa. Cmwlth. 2007). “[I]t is purely a question of law determinable from an inspection of the records in the two causes.” Hillgartner, 936 A.2d at 138 [quoting Hessenbruch v. Markle, 194 Pa. 581, 45 A. 669 (1900)].

Viewing Complaint 3 in the light most favorable to the Complainant, the Complainant has received a notice that his utility service is being terminated. There is another PUC complaint pending. The Complainant contacted the Respondent but the Respondent's employees provided no explanation for the shut off notice and refused to enter into a payment arrangement with the Complainant. In Complaint 3, the Complainant requests that the Commission direct the Respondent to provide the Complainant with a payment arrangement and impose a civil penalty on the Respondent for improperly attempting to terminate the Complainant's service.

In comparing Complaint 3 with Complaint 1 and Complaint 2, I will first observe that Complaint 1 and Complaint 2 are almost identical and it appears that Complaint 2 is a photocopy of Complaint 1. Complaint 1 and Complaint 2 both allege that the Respondent's employees came to the Complainant's property to shut off his utility service. According to Complaint 1 and Complaint 2, the Respondent did not provide a shut off notice prior to sending its employees to the Complainant's residence to shut off his service. In Complaint 1 and Complaint 2, the Complainant asserts that the Respondent refused to provide a payment arrangement for him. In Complaint 1 and Complaint 2, the Complainant requests that the Commission direct the Respondent to provide the Complainant with a payment arrangement and impose a civil penalty on the Respondent for improperly attempting to terminate the Complainant's service.

My review of the three complaints indicates that first, the parties in all three cases are the same. Second, while the wording in Complaint 3 differs from the wording in Complaints 1 and Complaint 2, the subject matter of all three complaints is the same. All three complaints address the same issues: the Complainant's allegations that the Respondent is attempting to terminate service and the Respondent's refusal to provide a payment arrangement to the Complainant. Third, the relief requested by the Complainant in all three complaints is identical: that the Commission order a payment arrangement and impose a civil penalty on the Respondent for improperly attempting to terminate the Complainant's service.

From the face of three complaints, it is certain that (1) the case is the same; (2) the parties are the same; and (3) the rights asserted and relief sought is the same in all three complaints. Therefore, Respondent has satisfied the three-pronged test for *lis pendens* and I will sustain the preliminary objections. I will therefore dismiss Complaint 3.

With regard to Complaint 1 and Complaint 2, the Commission issued an order on December 6, 2010, captioned Mark Mazza v. PECO Energy Company, Docket Nos. C-2009-2118230 and C-2009-2120401 (Order entered December 6, 2010), sustaining the Complainant's complaints in part and ordering a payment arrangement. Therefore, the Commission has granted a portion of the relief that the Complainant requested in all three complaints. I will enter the following order.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the parties and the subject matter of this dispute. 66 Pa. C.S.A. §701

2. To support a claim of pendency of a prior proceeding, known as *lis pendens*, the moving party must allege and prove that in both actions, the same parties are involved, the same rights asserted, and the same relief sought.

3. Review of all three complaints shows that (1) the case is the same; (2) the parties are the same; and (3) the rights asserted and relief sought is the same in all three complaints.

3. It is just, reasonable and in the public interest that the complaint filed at Docket No. C-2010-2171324 be dismissed.

ORDER

THEREFORE,

IT IS ORDERED:

1. That the preliminary objections filed by PECO Energy Company at Docket No. C-2010-2171324 are sustained.
2. That the complaint of Mark Mazza at Docket No. C-2010-2171324 against PECO Energy Company is dismissed.
3. That the record at Docket No. C-2010-2171324 is marked closed.

Date: May 2, 2011

David A. Salapa
Administrative Law Judge

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PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

EXHIBIT "9"

PENNSYLVANIA
PUBLIC UTILITY COMMISSION
Harrisburg, PA 17105-3265

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PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

Mark Mazza

v.

PECO Energy Company

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:
:
:
:

C-2010-2171324

FINAL ORDER

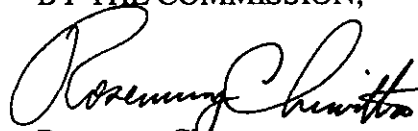
In accordance with the provisions of Section 332(h) of the Public Utility Code, 66 Pa. C.S. §332(h), the decision of Administrative Law Judge David A. Salapa dated May 2, 2011, has become final without further Commission action;

THEREFORE,

IT IS ORDERED:

1. That the preliminary objections filed by PECO Energy Company at Docket No. C-2010-2171324 are sustained.
2. That the complaint of Mark Mazza at Docket No. C-2010-2171324 against PECO Energy Company is dismissed.
3. That the record at Docket No. C-2010-2171324 is marked closed.

BY THE COMMISSION,



Rosemary Chiavetta
Secretary

(SEAL)

ORDER ENTERED: July 15, 2011

PECO ENERGY
EXHIBIT 9

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PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

EXHIBIT "10"

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AUG 14 2012

PENNSYLVANIA PUBLIC UTILITY COMMISSION
PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

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APR - 4 2011

Formal Complaint Form

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

Please print in ink or type.

1. CUSTOMER (COMPLAINANT) INFORMATION

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

Name MARK MAZZA

Street/P.O. Box 1271 FARM RD. Apt # _____

City BERWYN State PA Zip 19312

County Chester

Daytime Telephone Number Where We Can Contact You: (484) 318-6570

E-mail Address (optional): _____

Utility Account Number 72730-01005
(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

STEAM HEAT

GAS

WASTE WATER

WATER

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

TELEPHONE
(local, long distance)

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). Improper and insufficient notice of shut-off. No payment agreement offered and unjust rate increases.

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.

The above (4 other) is incorporated. PECO's notice of shutoff is improper and insufficient notice. Also, the notice includes charges for a bill that is not due yet. No payment agreement was offered, nor was I contacted by phone to address the issue. PECO shut off policy violates due process and equal protection federal and state laws and discriminates against me because I have no income and am unemployed.

5. RELIEF

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

Injunction or judgement precluding shut off. Require PECO to contact me and make all possible attempts to resolve or compromise the dispute. Require PECO to provide phone and letters notice of any shut off plans. In the alternative of denying shut off, place me in a program, because I have no income and am unemployed, that allows for special circumstances to be factored in arriving at a fair repayment plan since our bills well exceed my wife's income.

PECO should be fined and penalized for unfair and discriminatory practices, and for insufficient notice of shut-off. and improper

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.

3/30/14 left message asking them to contact me about the issue - no return phone call on house or cell phone.

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

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

Lawyer's Name N/A

Street _____

City _____ State _____ Zip _____

Area Code/Phone Number _____

E-mail Address (If Known) _____

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 MARK MAZZA, 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).

M. Mazza
(Signature)

4/4/11
(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.

RECEIVED

APR - 6 2011

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU



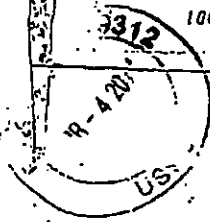
U.S. POSTAGE
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17105



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From/Expéditeur:

MA22A
1271 FARM RD.
Berwyn, Pa 19312

To/Destinataire:

Secretary
Pennsylvania Public Utility Commission
P.O. Box 3265
Harrisburg, Pa. 17105-3265

Country of Destination/Pays de destination:

DELIVERED

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AUG 14 2012

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

EXHIBIT "11"

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AUG 14 2012

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Mark Mazza

v.

PECO Energy Company

:
:
:
:
:

C-2011-2235775

**INITIAL DECISION SUSTAINING PRELIMINARY OBJECTIONS AND DISMISSING
COMPLAINT**

Before
Elizabeth H. Barnes
Administrative Law Judge

HISTORY OF THE PROCEEDING

On April 14, 2011, Mark Mazza (Complainant) filed a complaint with the Pennsylvania Public Utility Commission (Commission) against PECO Energy Company (Respondent). I will refer to this complaint throughout this decision as Complaint 4. Complaint 4 alleges that the Complainant has received an improper and insufficient notice that his utility service is being terminated. Complaint 4 further states "The notice includes charges for a bill that is not due yet. No payment agreement was offered, nor was I contacted by phone to address the issue. PECO shut off policy violates due process and equal protection federal and state laws and discriminates against me because I have no income and am unemployed." Complaint at 6.

Complainant seeks relief of injunction or judgment precluding the shut off. He requests PECO be required to contact him and make all possible attempts to resolve or compromise the dispute. Further, Complainant requests PECO be required to provide phone and letter notice of any shut off plans or alternatively place him in a program because he has no

income and is unemployed. He requests PECO be fined and penalized for unfair and discriminatory practices and for insufficient and improper notice of shut-off. Complaint at 7.

The Respondent filed an answer (“answer”) and preliminary objections on May 12, 2011, averring that the Complaint 4 should be dismissed as there are presently three other open actions regarding the same issues and service. The answer admits that the Respondent provides utility service to the Complainant at the address stated on the complaint. The answer denies that the Complainant is unable to pay his gas and electric bills. According to the answer, the Complainant has a history of late and missed payments. The answer asserts that the Complainant repeatedly files complaints in an effort to maintain utility service without payment. The answer contends that the Complainant has not demonstrated good faith and should be precluded from filing additional complaints.

The Commission served a complaint on the Respondent at Docket No. C-2009-2118230 on July 10, 2009. I will refer to this complaint throughout this decision as Complaint 1. Complaint 1 alleged improper termination and requested a payment arrangement.

The Commission served a complaint on the Respondent at Docket No. C-2009-212041 on July 22, 2009. I will refer to this complaint throughout this decision as Complaint 2. Complaint 2 raised the same issued raised in Complaint 1. Complaint 2 alleged improper termination and requested a payment arrangement.

Complaint 1 and Complaint 2 were consolidated for hearing. An initial hearing was held on April 13, 2010 and a second hearing was held on June 15, 2010. On August 17, 2010, Administrative Law Judge Angela Jones issued an Initial Decision ordering Complainant to make monthly payments consisting of his current bill plus one twenty-fourth (1/24th) of the balance accrued on his account, beginning with the first billing due date following the entry of a final Commission Order in the case. ALJ Jones further ordered that if Complainant does not keep the payment schedule stated in the Order, PECO was authorized to suspend or terminate his PECO services in accordance with the Commission’s statute and regulations. Mark

Mazza v. PECO Energy Company, C-2009-2118230, C-2009-2120401, August 17, 2010, Initial Decision at 18.

On September 29, 2010, Complainant filed exceptions claiming his constitutional rights were violated and the agreement was improper. On December 6, 2010, the Commission denied Mr. Mazza's exceptions and adopted the Initial Decision of ALJ Jones. Mr. Mazza appealed this final order and it is currently pending before the Commonwealth Court of Pennsylvania at Docket No. 2606 CD 2010, Mark Mazza v. Pennsylvania Public Utility Commission.

According to the answer, the Commission served Complaint 3 on the Respondent on April 21, 2010. Complaint 3 raises the same issues raised in Complaints 1 and 2, according to the answer.

The answer argues that the Complainant should be barred from filing additional complaints regarding his outstanding balance until he pays the outstanding amount due on his account. The answer alleges that the Complainant is using the Commission's complaint process to avoid payment and maintain his utility service. The answer requests that the Commission dismiss the complaint.

The preliminary objections reiterate the assertions set forth in the answer that the Complainant has previously filed Complaints 1 and 2 raising identical issues. The preliminary objections allege that Complaint 3 simply raises the same issues set forth in Complaints 1 and 2. The preliminary objections assert that Complaint 3 should be dismissed due to the pendency of the prior proceeding. The preliminary objections request that the Commission dismiss the complaint.

On June 1, 2010, the Complainant filed a response to the Respondent's preliminary objections. The Complainant alleged that Complaint 3 involved the termination notice the Respondent sent to him during the pendency of the prior proceedings. According to the Complainant, Complaint 3 involved new issues and facts different from the prior complaints.

The Complainant asserted that the issue in that complaint was whether the Respondent can issue a termination notice and terminate service while the prior complaints are pending and not yet adjudicated. On June 2, 2011, Administrative Law Judge David Salapa sustained the preliminary objections and dismissed Complaint 3.

On June 8, 2011, Complaint 4 was assigned to me as Motion Judge for a disposition regarding preliminary objections filed to Complaint 4. I will grant these preliminary objections for the following reasons.

FINDINGS OF FACT

1. The Complainant in this case is Mark Mazza.
2. The Respondent in this case is PECO Energy Company.
3. On April 4, 2011, the Complainant filed a complaint with the Commission against the Respondent.
4. The Respondent filed an answer on May 12, 2011.
5. On May 12, 2011, the Respondent filed preliminary objections.
6. Complainant did not file an answer to the preliminary objections.
7. On June 2, 2011, the parties were served a copy of Administrative Law Judge David Salapa's Initial Decision Sustaining Preliminary Objections and Dismissing Complaint.
8. On or about June 8, 2011, the instant Complaint 4 at Docket No. C-2011-2235775 was assigned to Administrative Law Judge Elizabeth Barnes as Motion Judge.

DISCUSSION

The Commission's Rules of Practice and Procedure permit parties to file preliminary objections. The grounds for preliminary objections are limited to those set forth in 52 Pa Code §5.101(a) as follows:

- (1) Lack of Commission jurisdiction or improper service of the pleading initiating the proceeding.
- (2) Failure of a pleading to conform to this chapter or the inclusion of scandalous or impertinent matter.
- (3) Insufficient specificity of a pleading.
- (4) Legal insufficiency of a pleading.
- (5) Lack of capacity to sue, nonjoinder of a necessary party or misjoinder of a cause of action.
- (6) Pendency of a prior proceeding or agreement for alternative dispute resolution.

Here the Respondent's preliminary objections assert that Complaint 4 should be dismissed due to the pendency of Complaints 1, 2, and 3 pursuant to 52 Pa. Code §5.101(6). I agree that it should be dismissed because Complaints 1 and 2 are currently the subject of litigation before the Commonwealth Court of Pennsylvania. Complaint 3 was dismissed by Initial Decision of ALJ Salapa on June 2, 2011.

Commission preliminary objection practice is analogous to Pennsylvania civil practice regarding preliminary objections. Equitable Small Transportation Intervenors v. Equitable Gas Company, 1994 Pa PUC LEXIS 69, Docket No. C-00935435 (July 18, 1994) Preliminary objections in civil practice requesting dismissal of a pleading will be granted only where the right to relief is clearly warranted and free from doubt. Interstate Traveller Services, Inc. v. Pa. Dept. of Environment Resources, 406 A.2d 1020 (Pa. 1979); Rivera v. Philadelphia Theological Seminary of St. Charles Borromeo, Inc., 595 A.2d 172 (Pa. Super. 1991) The

Commission follows this standard. Montague v. Philadelphia Electric Company, 66 Pa. PUC 24 (1988)

The Commission may not rely upon the factual assertions of the moving party but must accept as true for purposes of disposing of the motion all well pleaded, material facts of the nonmoving party, as well as every inference from those facts. County of Allegheny v. Commonwealth of Pennsylvania, 490 A. 2d 402 (Pa. 1985); Commonwealth of Pennsylvania v. Bell Telephone Co. of Pa., 551 A.2d 602 (Pa. Cmwlth. 1988). The Commission must view the complaint in this case in the light most favorable to the Complainant and should dismiss the complaint only if it appears that the Complainant would not be entitled to relief under any circumstances as a matter of law. Equitable Small Transportation Intervenors v. Equitable Gas Company, 1994 Pa PUC LEXIS 69, Docket No. C-00935435 (July 18, 1994)

The Commission regulation at 52 Pa. Code §5.21(a) states that a person may file a formal complaint claiming violation of a statute that the Commission has jurisdiction to administer. The regulation at 52 Pa. Code §5.21(d) authorizes the Commission to dismiss a complaint if a hearing is not necessary and authorizes preliminary objections to be filed in response to a complaint.

The regulation at 52 Pa. Code §5.101(a)(6) permits the filing of a preliminary objection to dismiss a pleading due to the pendency of a prior proceeding. The provision at 52 Pa. Code §5.101(a)(6) serves judicial economy by avoiding a hearing where no factual dispute exists. If no factual issue pertinent to the resolution of a case exists, a hearing is unnecessary. 66 Pa. C.S. §703(a); Lehigh Valley Power Committee v. Pennsylvania Pub. Util. Comm'n., 563 A.2d 557 (Pa. Cmwlth. 1989); Lehigh Valley Power Committee v. Pennsylvania Pub. Util. Comm'n., 563 A.2d 548 (Pa. Cmwlth. 1989); S.M.E. Bessemer Cement, Inc. v. Pennsylvania Pub. Util. Comm'n., 540 A.2d 1006 (Pa. Cmwlth. 1988); White Oak Borough Authority v. Pennsylvania Pub. Util. Comm'n., 103 A.2d 502 (Pa. Super. 1954)

The purposes of recognizing the doctrine of *lis pendens* are to prevent the respondent from having to defend several suits on the same cause of action at the same time, to

prevent the squandering of scarce judicial resources on duplicative actions, to maintain an orderly legal process, and to avoid inconsistent decisions on the same causes of action. “The law is quite clear that *lis pendens* is a valid defense only when the parties, the causes of action and the relief sought are the same in both actions (citations omitted).” Procacina v. Susen, 301 Pa. Super. 392, 394, 447 A.2d 1023, 1025 (1982).

The three-pronged identity test “requires more than a mere allegation of a pending suit; it requires proof that the prior case is the same, the parties are substantially the same, and the relief requested is the same (citations omitted).” Hillgartner v. Port Authority of Allegheny Cty., 936 A.2d 131, 137 (Pa. Cmwlth. 2007). “[I]t is purely a question of law determinable from an inspection of the records in the two causes.” Hillgartner, 936 A.2d at 138 [quoting Hessenbruch v. Markle, 194 Pa. 581, 45 A. 669 (1900)].

Viewing Complaint 4 in the light most favorable to the Complainant, the Complainant has received a notice that his utility service is being terminated. There are two other similar PUC complaints which were ruled upon and are now the subject matter of litigation pending before the Commonwealth Court. The Complainant contacted the Respondent but the Respondent’s employees provided no explanation for the shut off notice and refused to enter into a payment arrangement with the Complainant. In Complaint 3, the Complainant requests that the Commission direct the Respondent to provide the Complainant with a payment arrangement and impose a civil penalty on the Respondent for improperly attempting to terminate the Complainant’s service.

In comparing Complaint 4 with Complaints 1, 2, and 3, I will first observe that Complaint 1 and Complaint 2 are almost identical and it appears that Complaint 2 is a photocopy of Complaint 1. Complaint 1 and Complaint 2 both allege that the Respondent’s employees came to the Complainant’s property to shut off his utility service. According to Complaint 1 and Complaint 2, the Respondent did not provide a shut off notice prior to sending its employees to the Complainant’s residence to shut off his service. In Complaint 1 and Complaint 2, the Complainant asserts that the Respondent refused to provide a payment arrangement for him. In Complaint 1 and Complaint 2, the Complainant requests that the Commission direct the

Respondent to provide the Complainant with a payment arrangement and impose a civil penalty on the Respondent for improperly attempting to terminate the Complainant's service.

My review of the four complaints indicates that first, the parties in all four cases are the same. Second, while the wording in Complaint 3 and 4 differs from the wording in Complaints 1 and Complaint 2, the subject matter of all four complaints is essentially the same. All four complaints address the same issues: the Complainant's allegations that the Respondent is attempting to terminate service and the Respondent's refusal to provide a payment arrangement to the Complainant. Third, the relief requested by the Complainant in all four complaints is identical: that the Commission order a payment arrangement and impose a civil penalty on the Respondent for improperly attempting to terminate the Complainant's service.

From the face of four complaints, it is certain that (1) the case is the same; (2) the parties are the same; and (3) the rights asserted and relief sought is the same in all three complaints. Therefore, Respondent has satisfied the three-pronged test for *lis pendens* and I will sustain the preliminary objections. I will therefore dismiss Complaint 4.

With regard to Complaint 1 and Complaint 2, the Commission issued an order on December 6, 2010, captioned *Mark Mazza v. PECO Energy Company*, Docket Nos. C-2009-2118230 and C-2009-2120401 (Order entered December 6, 2010), sustaining the Complainant's complaints in part and ordering a payment arrangement. Therefore, the Commission has granted a portion of the relief that the Complainant requested in all three complaints.

The record in this case highlights a disturbing trend in Complainant's use of the Commission's informal and formal proceedings to avoid paying his electric bills while evading the Company's termination procedures. The Commission has on occasion precluded a party from filing further informal and formal complaints when the party has been an abuser of the system. Recently, in *Sheri Seidenstricker v. Metropolitan Edison Company*, Docket No. F-2008-2019388 (Final Order entered July 28, 2009), the Commission adopted the Administrative Law Judge's Initial Decision which, *inter alia*, ordered that complainant be

precluded from filing further informal and formal complaints pertaining to the same account until such time as the current balance on that account was paid in full, after finding that complainant had abused the system by using its provisions to prevent termination of service over the course of many years while receiving electric utility service from respondent and accruing a large outstanding balance. Similarly, in the instant case, I find Complainant should be precluded from filing further informal and formal complaints pertaining to his electric account (Account No. 72730-01005) for the service address of 1271 Farm Rd., Berwyn, PA 19312, until such time as the current balance on his account is paid in full.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the parties and the subject matter of this dispute. 66 Pa. C.S.A. §701

2. To support a claim of pendency of a prior proceeding, known as *lis pendens*, the moving party must allege and prove that in both actions, the same parties are involved, the same rights asserted, and the same relief sought.

3. Review of all four complaints shows that (1) the cases are the same; (2) the parties are the same; and (3) the rights asserted and relief sought is the same in all four complaints.

4. It is just, reasonable and in the public interest that the complaint filed at Docket No. C-2011-2235775 be dismissed with prejudice because Complainant is abusing the Commission's system by using its provisions to prevent termination of service while accruing an outstanding balance.

5. Complainant should be precluded from filing further informal and formal complaints pertaining to his electric account (Account No. 72730-01005) for the service address of 1271 Farm Rd., Berwyn, PA 19312, until such time as the current balance on his account is paid in full.

ORDER

THEREFORE,

IT IS ORDERED:


1. That the preliminary objections filed by PECO Energy Company at Docket No. C-2011-2235775 are sustained.

2. That the complaint of Mark Mazza at Docket No. C-2011-2235775 against PECO Energy Company is dismissed with prejudice.

3. That Mark Mazza be, and hereby is, precluded from filing further complaints with the Pennsylvania Public Utility Commission, whether of an informal or formal nature, regarding the arrearages on Account Number 72730-01005 for electric service rendered by PECO Energy Company regarding the service address of 1271 Farm Rd., Berwyn, PA 19312, until such time as the current balance on his account is paid in full.

4. That the record at Docket No. C-2011-2235775 be marked closed.

Date: June 10, 2011


Elizabeth H. Barnes
Administrative Law Judge

RECEIVED

AUG 14 2012

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

EXHIBIT "12"

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

Public Meeting held December 1, 2011

Commissioners Present:

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

Mark Mazza

C-2011-2235775

v.

PECO Energy Company

RECEIVED

OPINION AND ORDER

AUG 14 2012

BY THE COMMISSION:

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

Before the Pennsylvania Public Utility Commission (Commission) for consideration and disposition is the Initial Decision (I.D.) of Administrative Law Judge (ALJ) Elizabeth H. Barnes, issued herein on June 28, 2011. We exercised our right to review the Initial Decision pursuant to Section 332(h) of the Public Utility Code (Code), 66 Pa. C.S. § 332(h). Exceptions were subsequently filed. No Replies to Exceptions were filed.

Background

In the Initial Decision, the instant Complaint is referred to as “Complaint 4,” because the Complainant has filed three prior complaints against the Respondent. For the sake of consistency, we will adopt the same nomenclature.

On July 6, 2009, Mark Mazza (Complainant) filed a Complaint with the Commission against PECO Energy Company (PECO or Respondent), which was docketed at No. C-2009-2118230. That Complaint, referred to here as Complaint 1, alleged that in June 2009, PECO improperly terminated Complainant’s service without notice. Complainant also requested a payment arrangement.

On July 22, 2009, the Complainant filed another Complaint with the Commission against the Respondent, which was docketed at No. C-2009-2120401. This Complaint will be referred to here as Complaint 2. Complaint 2 raised the same issues raised in Complaint 1.

Complaints 1 and 2 were consolidated for hearing. An initial hearing was held on April 13, 2010, and a second hearing was held on June 15, 2010. On August 17, 2010, ALJ Angela Jones issued an Initial Decision ordering the Complainant to make monthly payments consisting of his current bill plus one twenty-fourth (1/24th) of the balance accrued on his account, beginning with the first billing due date following the entry of a final Commission Order in the case. ALJ Jones further ordered that, if the Complainant does not keep the payment schedule stated in the Order, PECO was authorized to suspend or terminate his service in accordance with the Code and the Commission’s Regulations. *Mark Mazza v. PECO Energy Company*, Docket Nos. C-2009-2118230 and C-2009-2120401 (Initial Decision entered August 17, 2010) at 18.

On September 29, 2010, the Complainant filed Exceptions. On December 6, 2010, the Commission denied the Exceptions and adopted the Initial Decision of ALJ Jones. The Complainant appealed this final order and it is currently pending before the Commonwealth Court of Pennsylvania at Docket No. 2606 CD 2010, *Mark Mazza v. Pennsylvania Public Utility Commission*.

On April 19, 2010, the Complainant filed another Complaint with the Commission against the Respondent, which was docketed at No. C-2010-2171324. This Complaint will be referred to here as Complaint 3. This Complaint concerned a ten-day shut-off notice that PECO issued on March 26, 2010. Complainant alleged it was improper for PECO to issue a termination notice while Complaints 1 and 2 were still pending. PECO filed an Answer and Preliminary Objections. PECO's Preliminary Objections alleged that the facts and issues raised by Complaint 3 were the subject of exhibits and testimony during the hearing on Complaints 1 and 2, which had not yet been decided by the ALJ. The Preliminary Objections asserted that Complaint 3 should be dismissed due to the pendency of the prior proceeding.

On June 1, 2010, the Complainant filed a response to the Respondent's Preliminary Objections. According to the Complainant, Complaint 3 involved new issues and facts different from the prior complaints. The Complainant asserted that the issue in that Complaint was whether the Respondent can issue a termination notice and terminate service while the prior complaints are pending and not yet adjudicated.

In his Initial Decision at Docket No. C-2010-2171324, issued on June 2, 2011, ALJ David Salapa sustained the Preliminary Objections. He found that all three complaints address the same issues: PECO's alleged improper termination of service and refusal to enter into a payment arrangement. He also found that all three complaints requested the same relief: that the Commission order PECO to enter into a payment arrangement with him and order PECO to pay a civil penalty for improperly

attempting to terminate service. As a result, ALJ Salapa dismissed Complaint 3, and directed that the record in that proceeding be marked closed. No Exceptions were filed, and that Initial Decision became final by Order of the Commission entered on July 15, 2011.

Procedural History

On April 4, 2011, the Complainant filed Complaint 4 with the Commission.¹ Complaint 4 alleged that the Complainant received improper and insufficient notice that his utility service was being terminated. Complaint 4 further stated that: “[t]he notice includes charges for a bill that is not due yet. No payment agreement was offered, nor was I contacted by phone to address the issue. PECO shut off policy violates due process and equal protection federal and state laws and discriminates against me because I have no income and am unemployed.” Complaint at 6.

The Complainant sought relief of injunction or judgment precluding the shut off. He requested that PECO be required to contact him and make all possible attempts to resolve or compromise the dispute. Further, the Complainant requested that PECO be required to provide phone and letter notice of any shut off plans, or alternatively, to place him in a program because he has no income and is unemployed. He requested that PECO be fined and penalized for unfair and discriminatory practices and for insufficient and improper notice of shut-off. Complaint at 7. The Complainant further alleged that he called PECO on March 30, 2011, to talk about the termination, but PECO did not return the call. Complaint at 8.

¹ The Complainant filed another Complaint on April 5, 2011, that appears to be identical to the Complaint filed on April 4, 2011. For the purposes of this proceeding, these two complaints are consolidated and hereinafter referred to as Complaint 4.

In an apparent attempt to supplement Complaint 4, the Complainant filed another Complaint on May 4, 2011, which was included in the record in this proceeding. This Complaint will be referred to here as the Supplement. Complainant attached to the Supplement a 10-day shut-off notice issued by PECO on March 24, 2011. Complainant explains in the Supplement that this shut-off notice is the notice he was contesting in Complaint 4. The Supplement also alleged that Complainant received a 72-hour shut-off notice from PECO on May 2, 2011, and that this notice was illegal, untimely, and insufficient because Complaint 4 was pending at the time. Complainant further alleged that PECO sent a representative to his house to shut off service on April 12, 2011, which Complainant also alleged was improper in light of the pending complaint. Supplement at 6.

On May 4, 2011, the Respondent filed an Answer and Preliminary Objections to Complaint 4.² The Preliminary Objections, however, contained an incorrect docket number (No. C-2010-2171324). Consequently, on May 12, 2011, the Respondent re-filed its Preliminary Objections. On May 24, 2011, the Complainant filed Responses to PECO's Preliminary Objections.

On June 28, 2011, ALJ Barnes recommended, *inter alia*, that PECO's Preliminary Objections be granted and that the Complaint be dismissed with prejudice. I.D. at 10. The Complainant filed his Exceptions on August 10, 2011.

² We note that, contrary to the Complainant's assertions, PECO properly filed both an Answer and Preliminary Objections. 52 Pa. Code § 5.101(d) states, in pertinent part: "Except as provided for in subsection (e) [which is not relevant here], the filing of preliminary objections may not eliminate the requirement to file an answer to the complaint or other initiating pleading."

Discussion

Initially, we are reminded that we are not required to consider expressly or at great length each and every contention raised by a party to our proceedings. *University of Pennsylvania v. Pa. PUC*, 485 A.2d 1217 (Pa. Cmwlth. 1984). Any exception or argument that is not specifically addressed herein shall be deemed to have been duly considered and denied without further discussion.

Procedural Matters

The Complainant's Exceptions to the Initial Decision were not timely filed. Exceptions were due by July 18, 2011, and the Complainant filed his Exceptions on August 10, 2011. Nevertheless, the Initial Decision did not become final because we requested review of the ALJ's decision pursuant to 66 Pa. C.S. § 332(h).

Our Regulation at 52 Pa. Code § 1.2(a) allows us to disregard a defect of procedure that does not affect the substantive rights of the parties. Considering that the case was already being reviewed by the Commission, and that the Respondent had an opportunity to respond to the Exceptions, we fail to see how the substantive rights of the Respondent are affected by our consideration of the Exceptions. In the interest of the just, speedy and inexpensive determination of this proceeding, we will consider the Exceptions.

Legal Standards

The rules regarding preliminary objections are simple and specific:

§ 5.101. Preliminary objections.

(a) *Grounds.* Preliminary objections are available to parties and may be filed in response to a pleading except motions and prior preliminary objections. Preliminary objections must be accompanied by a notice to plead, must state specifically the legal and factual grounds relied upon and be limited to the following:

- (1) Lack of Commission jurisdiction or improper service of the pleading initiating the proceeding.
- (2) Failure of a pleading to conform to this chapter or the inclusion of scandalous or impertinent matter.
- (3) Insufficient specificity of a pleading.
- (4) Legal insufficiency of a pleading.
- (5) Lack of capacity to sue, nonjoinder of a necessary party or misjoinder of a cause of action.
- (6) Pendency of a prior proceeding or agreement for alternative dispute resolution.

52 Pa. Code § 5.101(a).

Commission preliminary objection practice is similar to Pennsylvania civil practice. *Equitable Small Transportation Intervenors v. Equitable Gas Company*, 1994 Pa. PUC LEXIS 69 (July 18, 1994). When considering the preliminary objection, the Commission must determine:

. . . whether the law says with certainty, based on well-pleaded factual averments . . . that no recovery or relief is possible. *P.J.S. v. Pa. State Ethics Commission*, 669 A.2d 1105 (Pa. Cmwlth. 1996). Any doubt must be resolved in favor of the non-moving party by refusing to sustain the preliminary objections. *Boyd v. Ward*, 802 A.2d 705 (Pa. Cmwlth. 2002).

Dept. of Auditor General, et al. v. State Employees' Retirement System, et al., 836 A.2d 1053, 1064 (Pa. Cmwlth. 2003).

Additionally, in considering preliminary objections, the Commission may not rely upon the factual assertions of the moving party, but must accept as true for purposes of disposing of the motion all well pleaded, material facts of the nonmoving party, as well as every inference from those facts. *County of Allegheny v. Commonwealth of Pennsylvania*, 490 A.2d 402 (Pa. 1985); *Commonwealth of Pennsylvania v. Bell Telephone Co. of Pa.*, 551 A.2d 602 (Pa. Cmwlth. 1988). In this case, the Commission must view the Complaint in the light most favorable to the Complainant, and should dismiss the Complaint only if it appears that the Complainant would not be entitled to relief under any circumstances as a matter of law. *Equitable Small Transportation Intervenors, supra*. Only the facts in the Complaint and the Response to Preliminary Objections can be presumed to be true in order to determine whether recovery is possible.

Positions of the Parties

In its Preliminary Objections, PECO averred that Complaint 4 should be dismissed as there were three other open actions regarding the same issues and service. As above noted, Complaints 1 and 2 are currently the subject of litigation before the Commonwealth Court. Complaint 3 was dismissed by Initial Decision of ALJ Salapa in his Initial Decision issued on June 2, 2011.

In his response to PECO's Preliminary Objections, the Complainant contended that, in the instant Complaint, he asserted new actions and/or behavior by PECO regarding the sufficiency, legality and timeliness of shutoff of its termination notices. Further, contended the Complainant, the instant Complaint alleged inaction by PECO to address the resolution of the matter. Finally, the Complainant alleged that

PECO attempted a shutoff, without affording him due process, even after he had delivered his Complaint to the Commission and notified PECO of the Complaint. Response at 2.

ALJ's Decision

ALJ Barnes applied the doctrine of *lis pendens*, which states that a party has a valid defense in one proceeding when the parties, the causes of action, and the relief sought are the same as in another, on-going proceeding. I.D. at 7. The ALJ found that all three prongs of the test are satisfied in this case, and so dismissed Complaint 4. *Id.* at 8.

Exceptions

The Complainant's Exceptions contend, *inter alia*, that the Initial Decision violates his federal and state constitutional rights, violates state and federal law, and constitutes an abuse of discretion. Exceptions at 1. The Complainant's Exceptions also challenge ALJ Salapa's Initial Decision dismissing Complaint 3.³ The Complainant also argues that the Initial Decision went beyond the relief requested in the Preliminary Objections by precluding him from filing further complaints with the Commission regarding arrearages for his electric service, until such time as his account is paid in full. *Id.* at 2.

Disposition

For the reasons set forth below, we shall reverse the Initial Decision and remand for such further proceedings as may be warranted.

³ These arguments are essentially Exceptions to that decision, which cannot be entertained here.

As stated above, the Respondent's Preliminary Objections may only be granted if it is clear that no recovery or relief is possible. Any doubt must be resolved in favor of the Complainant. Further, the Commission must accept as true the well-pleaded material facts of the Complainant.

We cannot conclude that the three prongs of the *lis pendens* doctrine have been met in this case because the causes of action are not identical. In Complaints 1 and 2, the Complainant alleged that in 2009, PECO improperly terminated the Complainant's service without notice and requested a payment arrangement. In Complaint 3, the Complainant contested a 10-day termination notice that PECO issued on March 26, 2010, while Complaints 1 and 2 were still pending. Complaint 4, filed April 4, 2011, contends that a shutoff notice issued by PECO was improper and insufficient. Complaint 4 at 1-2. While Complaint 4 does not clearly indicate the date of the alleged improper notice, the Supplement filed May 4, 2011, clarifies that Complainant was referring to a 10-day shut off notice issued by PECO on March 24, 2011. In addition, the Supplement contests a 72-hour shut off notice issued by PECO on May 2, 2011, while Complaint 4 was pending.

Moreover, the Complainant's response to PECO's Preliminary Objections states:

The current complaint asserts new actions and/or behavior by [PECO] regarding sufficiency, legality and timeliness of shutoff or termination notices. Further, complaints allege new facts by [PECO] of recent activity pertaining to improper or insufficient termination of services efforts and improper attempts to terminate services at complainant's property.

Response to Preliminary Objections at 2 (typographical errors corrected). We must accept these allegations as true.

Complaint 4 is not barred by Complaints 1-3 to the extent that Complaint 4 concerns different events. We do not believe that the ongoing litigation about the propriety of actions taken in 2009 and 2010 precludes the Complainant from challenging actions taken by PECO in 2011. Since Complaint 4 does not concern the same events as those involved in Complaint's 1-3, we cannot grant the Preliminary Objection.

We find that this case is similar to *Anderson v. PECO Energy Company*, Docket No. C-2009-2136754 (Order entered May 20, 2011). That case involved a Judgment on the Pleadings, filed by the same utility involved in the instant case, contending that the complainant's bill dispute was barred by the doctrines of *res judicata* and collateral estoppel. The ALJ agreed, finding that the complainant had previously litigated a bill dispute with the respondent. We reversed, in part, because the complainant contested bills in the second proceeding that were not contested in the first proceeding. To the extent that the instant Complaint concerns a different set of facts than those involved in the prior cases, the Complaint is not barred by the prior litigation.

Finally, we note the following language from pages 8-9 of the Initial Decision:

The record in this case highlights a disturbing trend in Complainant's use of the Commission's informal and formal proceedings to avoid paying his electric bills while evading the Company's termination procedures. The Commission has on occasion precluded a party from filing further informal and formal complaints when the party has been an abuser of the system. Recently, in *Sheri Seidenstricker v. Metropolitan Edison Company*, Docket No. F-2008-2019388 (Final Order entered July 28, 2009), the Commission adopted the Administrative Law Judge's Initial Decision which, *inter alia*, ordered that complainant be precluded from filing further informal and formal complaints pertaining to the same account until such time as the current balance on that account was paid in full, after finding that complainant had abused the

system by using its provisions to prevent termination of service over the course of many years while receiving electric utility service from respondent and accruing a large outstanding balance. Similarly, in the instant case, I find Complainant should be precluded from filing further informal and formal complaints pertaining to his electric account (Account No. 72730-01005) for the service address of 1271 Farm Rd., Berwyn, PA 19312, until such time as the current balance on his account is paid in full.

Although we believe the ALJ erred by dismissing Complaint 4 on Preliminary Objections, we share the ALJ's concern about the potential misuse of the Commission's litigation process. We remind the Complainant that he is required to pay undisputed amounts during the pendency of the complaint process.

52 Pa. Code § 56.181. In addition, we remind the Complainant of our authority to impose sanctions in an appropriate case. In particular, we draw the Complainant's attention to 52 Pa. Code § 1.35(c), which states, in pertinent part:

- (1) The signature of the individual signing a document filed with the Commission constitutes a certificate by the individual that:
 - * * *
 - (iii) The document is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification or reversal of existing law, to the best of the individual's knowledge, information and belief formed after reasonable inquiry.
 - (iv) The document is not interposed for an improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation.
- (2) If a document is signed in violation of this subsection, the presiding officer or the Commission, upon motion or upon its own initiative, may impose upon the

individual who signed it, a represented party, or both, an appropriate sanction, which may include striking the document, dismissal of the proceeding or the imposition of civil penalties under section 3301 of the act (relating to civil penalties for violations).

Additionally, in an effort to expedite the resolution of this case, we request that the ALJ issue an initial decision on remand within 120-days of the issuance of this order.

Conclusion

We have reviewed the record as developed and the Initial Decision in this proceeding. For the reasons set forth above, we shall reverse the ALJ's Initial Decision and remand this matter for such further proceedings as may be warranted, consistent with this Opinion and Order; **THEREFORE,**

IT IS ORDERED:

1. That the Exceptions filed by Mark Mazza on August 10, 2011, to the Initial Decision of Administrative Law Judge Elizabeth H. Barnes, are granted in part and denied in part.
2. That the Initial Decision of Administrative Law Judge Elizabeth H. Barnes, issued on June 28, 2011, herein is reversed, consistent with this Opinion and Order.
3. That the Preliminary Objections filed by PECO Energy Company at Docket No. C-2011-2235775 are denied, consistent with this Opinion and Order.

4. That this proceeding is remanded to the Office of Administrative Law Judge for such further proceedings as may be warranted.

BY THE COMMISSION,

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

Rosemary Chiavetta
Secretary

(SEAL)

ORDER ADOPTED: December 1, 2011

ORDER ENTERED: December 1, 2011

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PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

EXHIBIT "13"

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Mark D. Mazza

v.

PECO Energy Company

:
:
:
:
:
:

C-2011-2235775

INITIAL DECISION

Before
Elizabeth H. Barnes
Administrative Law Judge

HISTORY OF THE PROCEEDING

On April 4, 2011, Mark D. Mazza (Complainant) filed a complaint against PECO Energy Company (PECO or Respondent). The Complaint was docketed at Docket No. C-2011-2235775. On April 5, 2011, Complainant attempted to file another complaint with a copy of a ten day shut off notice dated March 24, 2011 from Respondent attached. This was incorporated into the same docket. On May 4, 2011, Complainant attempted to file another complaint against Respondent claiming he received a notice that his utility service is being terminated. He requested a stay of all notices and attempts to shut off his services. He further requested PECO be required to provide phone and certified mail notice of any shut off plans as well as a payment arrangement. He requested PECO be fined for violating PUC regulations and other state and federal law. He attached to this complaint a 72-hour shut-off notice and the March 24, 2011 shut off notice. This complaint was also incorporated into the above docket number. On April 14, 2011, the complaint was served upon Respondent, which filed a timely Answer on May 4 and Preliminary Objections on May 12, 2011.

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SECRETARY'S BUREAU

PECO ENERGY
EXHIBIT 13

The complaint alleges that Complainant received improper and insufficient notice that his utility service was being terminated. This complaint further states that the notice includes charges for a bill that was not due yet. No payment agreement was offered, nor was Complainant contacted by telephone to address the issue. PECO's shutoff policy violated due process and equal protection under federal and state laws and discriminated against the Complainant because he had no income and was unemployed at the time.

Complainant seeks relief in the form of of an injunction or judgment precluding the shutoff. He requests PECO be required to contact him and make all possible attempts to resolve or reach a compromise of the dispute. Further, Complainant requests PECO be required to provide phone and letter notice of any shutoff plans, or, alternatively place him in a program because he has no income and is unemployed. He requested PECO be fined and penalized for unfair and discriminatory practices and for insufficient and improper notice of shutoff.

In his supplemental information to the original complaint, Complainant further alleges the 72-hour shut-off notice from PECO on May 2, 2011 was illegal, untimely, and insufficient because his complaint was pending at the time. Complainant further alleged that PECO sent a representative to his house to shut off service on April 12, 2011, which Complainant also alleged was improper in light of the pending complaint. In its Answer, PECO denies sending a service representative to Complainant's house to shut off service on April 12, 2011.

Complainant had filed three prior complaints against Respondent. On July 6, 2009, a complaint was filed at Docket No. C-2009-2118230 alleging improperly terminated service without notice. Complainant also requested a payment arrangement. On July 22, 2009, Complainant filed a second complaint at Docket No. C-2009-2120401. The two complaints were consolidated for hearing. After hearings on April 13, 2010 and June 15, 2010, ALJ Angela Jones issued an Initial Decision ordering Complainant to make monthly payments consisting of his current bill plus one twenty-fourth (1/24th) of the balance accrued on his account. ALJ Jones further ordered that, if the Complainant did not keep the payment schedule stated in the Order, PECO was authorized to suspend or terminate his service in accordance with

the Public Utility Code and the Commission's regulations. *Mark Mazza v. PECO Energy Company*, Docket Nos. C-2009-2118230 and C-2009-2120401 (Initial Decision entered August 17, 2010) at 18.

On September 29, 2010, Complainant filed Exceptions. On December 6, 2010, the Commission denied the Exceptions and adopted the Initial Decision of ALJ Jones. The Complainant appealed this final order and on January 4, 2012 the Commonwealth Court affirmed the Commission's Order. *Mark Mazza v. Pennsylvania Public Utility Commission*, No. 2606 C.D. 2010, Memorandum Opinion Per Curium.

On April 19, 2010, Complainant filed another complaint at Docket No. C-2010-2171324 concerning a 10-day shut-off notice PECO issued on March 26, 2010. ALJ David Salapa sustained Preliminary Objections to the complaint on the basis that all three complaints requested the same relief: a payment arrangement and a civil penalty against PECO for attempting to improperly terminate service. The Initial Decision dismissing the complaint was made final by order of the Commission entered on July 15, 2011.

On April 4, 2011, Complainant filed the instant complaint alleging he received improper notice that his utility service was being terminated and requesting a payment arrangement. Complainant supplemented his filing twice on April 5 and May 4, 2011. On May 4 and 12, Respondent filed an Answer and Preliminary Objections. On June 28, 2011, I recommended PECO's Preliminary Objections be granted and the complaint be dismissed with prejudice on the grounds of *lis pendens*. Complainant filed Exceptions and the Commission granted these exceptions in part, as well as reversed and remanded my Initial Decision for a hearing. *Mark Mazza v. PECO Energy Company*, C-2011-2235775, Opinion and Order dated December 1, 2011.

A telephonic hearing on remand was held on March 9, 2012. Complainant testified on his own behalf, and offered no exhibits. Tishekia Williams, Esquire represented PECO and offered 4 exhibits which were entered into the record. Teresa Ferrier testified for PECO. The record closed on March 9, 2012.

FINDINGS OF FACT

1. Complainant is Mark D. Mazza, whose service address is 1271 Farm Road, Berwyn, Pennsylvania. Complaint; N.T. 6.
2. Respondent is PECO Energy Company, a jurisdictional electric distribution company (EDC) providing residential electricity service in the Commonwealth of Pennsylvania.
3. PECO supplies Complainant with gas and electricity service at his home.
4. Complainant's testimony at the hearing that he had received no written or telephone notice before PECO representatives attempted to terminate his service in April, 2011, is incredulous. N.T. 9-11.
5. Copies of a 10-day notice letter and 72-hour notice of termination are in the record because they were submitted by Complainant attached to Complaints filed on April 5 and May 4, 2012, which were incorporated into the instant docket.
6. The 10-day and 72-hour notices of termination corroborate the testimony of PECO's witness, Teresa Ferrier, as well as PECO Exhibit No. 3 which is a timeline of events showing that a 10-day termination notice was mailed on March 24, 2011, for \$1,576.20 effective on or soon after April 7, 2011 and a 72-hour notice of termination was posted on the service property on May 2, 2011 noting a past due balance of \$1,576.20. PECO Exhibit 3, N.T. 27-28.
7. Ms. Ferrier's testimony that no PECO service representative visited the service residence and attempted to shut off Complainant's service or posted a 72-hour notice prior to April 4, 2011, is credible. N.T. 31.
8. Two adults and two children live in the service residence. N.T. 42-43.

9. Complainant's wife resides at the service residence and she earns approximately \$3,868 gross monthly salary. N.T. 42.

10. Complainant defaulted on his Commission ordered payment arrangement dated October 20, 2010. PECO Exhibits 1 – 4.

11. Complainant's outstanding balance was \$9,561.67 as of March 9, 2012. PECO Exhibit 1.

DISCUSSION

As the party seeking affirmative relief from the Commission, Complainant bears the burden of proof. 66 Pa. C.S.A § 332(a).

To satisfy this burden, a complainant must show that the named utility is responsible or accountable for the problem described in the Complaint. *Patterson v. Bell Telephone Company of Pennsylvania*, 72 PA PUC 196 (1990); *Feinstein v. Philadelphia Suburban Water Company*, 50 PA PUC 300 (1976). This must be shown by a preponderance of the evidence. *Samuel J. Lansberry, Inc. v. PA Pub. Util. Comm'n*, 578 A.2d 600 (Pa. Cmwlth. 1990), *alloc. den.*, 602 A.2d 863 (Pa. 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*, 70 A.2d 854 (Pa. 1950). Additionally, any finding of fact necessary to support the Commission's adjudication must be based upon substantial evidence. *Mill v. Comm'w., PA Pub. Util. Comm'n*, 447 A.2d 1100 (Pa. Cmwlth. 1982); *Edan Transportation Corp. v. PA Pub. Util. Comm'n*, 623 A.2d 6 (Pa. Cmwlth. 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 Pub. Util. Comm'n*, 413 A.2d 1037 (Pa. 1980); *Erie Resistor Corp. v. Unemployment Compensation Bd. of Review*, 166 A.2d 96 (Pa. Super. 1960); *Murphy v. Commonwealth, Dep't. of Public Welfare, White Haven Center*, 480 A.2d 382 (Pa. Cmwlth. 1984).

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. This must be shown by a preponderance of the evidence. *Patterson v. Bell Telephone Company of Pennsylvania*, 72 PA PUC 196 (1990).

The controlling law in this case is from Chapter 14 of the Public Utility Code (relating to responsible utility customer protection), 66 Pa.C.S. §§ 1401 – 1410.

Notice

Section 1406(b) of the Public Utility Code, 66 Pa. C.S. § 1406(b), provides that prior to terminating service, a public utility shall provide written notice of the termination to the customer at least ten days prior to the date of the proposed termination. The termination notice shall remain effective for 60 days. Also prior to termination, the public utility shall attempt to contact the customer or occupant either in person or by telephone to provide notice of the proposed termination at least 3 days prior to the scheduled termination. After complying with a 3-day notice requirement, the utility shall attempt to make personal contact with the customer at the time the service is terminated. Termination of service shall not be delayed for failure to make personal contact. 66 Pa. C.S. § 1406(b)(1)(i);(ii);(iv).

Complainant claims he never received the 10-day written notice in the mail. He claims that because it was not mailed to him via certified mail, there is insufficient evidence to show Respondent complied with the notice requirement of 66 Pa.C.S. § 1406(b)(1)(i). Complainant further claims notice was never posted on his property on May 4, 2011. N.T. 6-7. He claims if he had received proper notice in advance of termination, he would have responded and dealt with the situation to avoid a shutoff. N.T. 8.

PECO's witness, Teresa Ferrier, testified that no PECO service representative visited the service residence and attempted to shut off Complainant's service. Further, she

testified no representative posted a 72-hour notice prior to April 4, 2011. N.T. 31. I find this testimony to be credible and it is supported by PECO Exhibit No. 3 which is a timeline of events showing that a 10 day termination notice was mailed on March 24, 2011, for \$1,576.20 effective on or soon after April 7, 2011 and a 72-hour notice of termination was posted on the service property on May 2, 2011 noting a past due balance of \$1,576.20. PECO Exhibit 3, N.T. 27-28.

Ms. Ferrier's testimony is further supported by Complainant's own earlier submissions into the record. Specifically, in support of his April 4 complaint, on April 5 and May 4, 2011, Complainant filed copies of the 10-day termination notice letter and 72-hour shut off notice which were incorporated into the instant docket. The termination notices complied with 52 Pa. Code §§ 56.91; 56.93; and 56.96 which provide for certain information to be contained in the notices. Ms. Ferrier testified that the company did not receive the 10-day notice letter back through returned mail, and the presumption is that Complainant received the notice.¹ Complainant's assertion that he did not receive notice without any corroborative evidence is insufficient to overcome the presumption that he received notice and the fact that he had earlier provided copies of these notices to the Commission. This evidence is substantial to show Respondent was in compliance with the Public Utility Code regarding notice of termination.

Complainant has failed to prove Respondent violated 66 Pa. C.S. §1406(b)(1)(i);(ii);(iv). He offered no corroborative evidence to support his claim that he did not receive either the 10-day or 3-day termination notices. Contrary to his own testimony, on May 4, 2011, he complained to the Commission that he had received a notice that his utility service is being terminated. Specifically, Complainant stated,

¹ Notice mailed to a party's last known address and not returned by the post office is presumed to have been received. *Chartiers Industrial and Commercial Development Auth. v. Allegheny Cty. Bd. of Property Assessment Appeals and Review*, 165 Pa.Cmwlth. 671, 645 A.2d 944 (1994), app. denied, 539 Pa. 696, 653 A.2d 1234 (1994); *Berkowitz v. Mayflower Securities, Inc.*, 455 Pa. 531, 317 A.2d 584 (1974); *John D. Stewart, Jr. v. Columbia Gas of Pennsylvania, Inc.*, Docket Number C-00957041, Opinion and Order adopted March 28, 1996, entered May 10, 1996. Mere assertion that the document was not received, without corroboration, is insufficient to overcome the presumption of receipt. *Donegal Mutual Ins. Co. v. Insurance Dep't*, 719 A.2d 825 (Pa.Cmwlth. 1998); *Geise v. Nationwide Life and Annuity Co.*, 939 A.2d 409 (Pa.Super. 2007).

Due to receipt of another shut off notice from PECO, I have no choice but to file this complaint. The shut off notice is attached and contend the notice and its contents are illegal, untimely, insufficient and allegedly in violation of PUC regulations, state law and federal law. A full investigation of PECO's practice and procedures regarding shut off needs to be conducted by the PUC. I filed 2 previous complaints regarding shut off notices, received by the PUC on or about April 4, 2011. Despite the filings, PECO sent a representative to the property on 4/12/11 to shut off services. This was illegal and improper action and allegedly in violation of PUC regulations. No one called me prior to this shut off attempt. Now another notice to shut off (attached) dated 5/2/11, claiming that I must pay \$1,576.20 or services will be shut off. I object to this notice and the amount claimed and request a hearing to address the issues. This is the same amount that was in a ten day shut off notice (attached), which I objected to and complaints regarding that notice are pending at the PUC. Hearings are necessary in this complaint and the prior complaints regard in that shut off notices. Shut off should be stayed pending litigation.

Complainant offered no evidence to show the amount requested by PECO was in error. This additional information constitutes substantial evidence showing that Respondent complied with the notice requirements of 66 Pa. C.S. § 1406(b)(1).

The company is not required under Chapter 14 to provide a 10-day notice of termination via certified mail as Complainant requests. Complainant is asking for a stricter compliance standard than the utility code. Accordingly, I find in favor of Respondent on this issue.

Payment arrangement

Complainant is not entitled to a new payment arrangement because he failed to comply with the terms of a previous Commission ordered payment arrangement dated October 20, 2010. The Public Utility Code at 66 Pa.C.S. §1405(d) 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.

Since the Complainant has failed to make the payments ordered by the Commission, he has defaulted on the payment arrangement. Complainant failed to show he had a change in income.

The Commission may not reinstate a payment arrangement where the customer has defaulted except in limited circumstances. 66 Pa.C.S. §1405(e) provides in pertinent part:

(e) Extension of payment agreements. – If the customer defaults on a payment agreement established under subsections (a) and (b) as a result of a significant change in circumstances, the commission may reinstate the payment agreement and extend the remaining term for an initial period of six months. The initial extension period may be extended for an additional six months for good cause shown.

A “significant change in circumstances” is defined in 66 Pa.C.S. § 1403 as follows:

“Significant change in circumstance.” Any of the following criteria when verified by the public utility and experienced by customers with household income less than 300% of the federal poverty level:

- (1) The onset of a chronic or acute illness resulting in a significant loss in the customer’s household income.
- (2) Catastrophic damage to the customer’s residence resulting in a significant net cost to the customer’s household.
- (3) Loss of the customer’s residence.
- (4) Increase in the customer’s number of dependents in the household.

In the instant case, Complainant offered no evidence that any of the above factors applied to his situation.

Since I have concluded that the Commission lacks the authority to order a further reduced payment arrangement in these circumstances, the full balance of \$9,561.67 is due and payable. PECO Exhibit 1. PECO may offer another payment arrangement as it seemed willing to before the hearing and this is within the company's discretion. For the foregoing reasons, the Complaint will be denied and dismissed.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the subject matter and parties to this proceeding. 66 Pa. C.S. §701.
2. Pursuant to 66 Pa. C.S. §332(a), the Complainant has failed to meet his burden of proof in this proceeding.
3. The Responsible Utility Customer Protection Act, 66 Pa. C.S. § 1401 *et seq.*, applies to this proceeding.
4. Pursuant to 66 Pa.C.S. § 1405(a), the Commission is authorized to establish a payment arrangement between a public utility and a customer.
5. Complainant has failed to meet his burden of proving that he is entitled to a second Commission-ordered payment arrangement. 66 Pa.C.S. § 1405(c).
6. Complainant has failed to prove Respondent violated 66 Pa. C.S. § 1406(b)(1)(i);(ii);(iv).
7. Complainant has failed to prove Respondent is in violation of 66 Pa. C.S. §1407 (b)(4).

8. Complainant has failed to prove Respondent is in violation of 66 Pa. C.S.
§ 1404.

ORDER

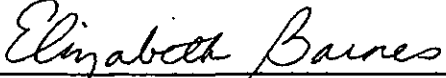
THEREFORE,

IT IS ORDERED:

1. That the Complaint of Mark D. Mazza against PECO Energy Company at Docket No. C-2011-2235775 is hereby denied and dismissed.

2. That the record at Docket No. C-2011-2235775 be marked closed.

Dated: April 16, 2012


Elizabeth Barnes
Elizabeth Barnes
Administrative Law Judge

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PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

EXHIBIT "14"

PENNSYLVANIA
PUBLIC UTILITY COMMISSION
Harrisburg, PA 17105-3265

Mark D. Mazza

v.

PECO Energy Company

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C-2011-2235775

FINAL ORDER

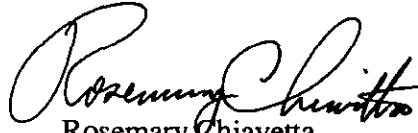
In accordance with the provisions of Section 332(h) of the Public Utility Code, 66 Pa. C.S. §332(h), the decision of Administrative Law Judge Elizabeth H. Barnes dated April 16, 2012, has become final without further Commission action;

THEREFORE,

IT IS ORDERED:

1. That the Complaint of Mark D. Mazza against PECO Energy Company at Docket No. C-2011-2235775 is hereby denied and dismissed.
2. That the record at Docket No. C-2011-2235775 be marked closed.

BY THE COMMISSION,


Rosemary Chiavetta
Secretary

(SEAL)

ORDER ENTERED: June 1, 2012

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PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

PECO ENERGY
EXHIBIT 14

EXHIBIT "15"

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AUG 14 2012

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU



Agnes Manu, Stephen Atuahene a/k/a Stephen Frempong, Stephen Atuahene-Frempong, Benjamin Atuahene a/k/a Benjamin Atuahene-Frempong et. al, d/b/a F.A. Investment Group, Inc. vs. AT&T Communications of Pennsylvania, Inc.; the Bell Telephone Company of Pennsylvania, Inc.; & Philadelphia Electric Company, Inc.

Docket Nos. F-09029141; C-00935014; C-00934970; C-009113621; C-00924554

PENNSYLVANIA PUBLIC UTILITY COMMISSION **RECEIVED**

1994 Pa. PUC LEXIS 25

AUG 14 2012

May 4, 1994

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

PANEL: [*1]

Commissioners Present:

David W. Rolka, Chairman; Joseph Rhodes, Jr. Vice Chairman; John M. Quain; Lisa Crutchfield; John Hanger

OPINION: OPINION AND ORDER

Before the Commission for consideration are the consolidated complaints of three family members ("Complainants"), n1 filed on behalf of themselves and their corporate alter ego, F.A. Investment, Inc. ("FAI"). As will be set forth below, the Complaints pertain to disputes over utility services delivered to FAI by AT&T Communications of Pennsylvania, Inc., the Bell Telephone Company of Pennsylvania, Inc., and Philadelphia Electric Company ("Respondents").

n1 The three Complainants are Agnes Manu, Stephen Atuahene and Benjamin Atuahene.

Brief History of the Proceeding

1. On July 24, 1990, Agnes Manu was dispatched a copy of an informal decision of the Public Utility Commission's ("Commission") Bureau of Consumer Services ("BCS") concerning a Complaint for utility services delivered to 7000 Woodbine Street in the City of Philadelphia under Account (215) 877-0618 for FAI.
2. On August 7, 1990, the Commission's staff dispatched correspondence confirming that Complainant had filed a formal Request for Appeal ("Appeal") from the [*2] earlier BCS decision.
3. On August 24, 1990, the Commission's staff granted Complainant an extension, until September 10, 1990, in which to file a Formal Complaint.
4. On September 10, 1990, Complainant filed a Formal Complaint with the Public Utility Commission. Complainant alleged that about \$ 1,750 of a total \$ 5,000 bill for AT&T services ("AT&T") was inaccurate due to equipment failures and erroneous readings. Complainant requested that the Commission require both AT&T and the Bell Telephone Company of Pennsylvania ("Bell") to verify the functionality of their equipment.
5. On September 14, 1990, the Commission provided notice to AT&T and Bell that Complainant's Formal Complaint had been filed with the Commission.
6. On October 1, 1990, AT&T filed a Motion for A More Specific Pleading ("October pleading") with the Commission in response to the September 10, 1990 Complaint. In the October pleading, AT&T requested a more specific pleading based on the fact that Complainant's claims concerning a \$ 1,750 billing dispute were not specific. AT&T averred that its equipment was functioning in accordance with Commission requirements.

PECO ENERGY
EXHIBIT 15

7. On October 5, 1990, Bell filed a Formal [*3] Answer ("Answer") to the Complaint. Bell alleged, inter alia that there were no equipment failures, and that no payments on the account had been received since November 1989.

8. On October 23, 1990, Administrative Law Judge ("ALJ") Schnierle issued an Initial Decision (the "October I.D."). In the October I.D., ALJ Schnierle noted that no answer had been filed to AT&T's October pleading and that the state of Complainant's pleadings justified granting the request for a more specific pleading. See October I.D. at 2-4. ALJ Schnierle also provided that the Complaint would be dismissed, with prejudice, unless Complainant filed an amended complaint within a 20 day period (October I.D. at 2-4).

9. On December 5, 1990, ALJ Schnierle issued another I.D. (the "December I.D.") dismissing the Complaint because of Complainant's failure to file an Amended Complaint within the 20 day period.

10. On December 14, 1990, the Office of Administrative Law Judge ("OALJ") mailed copies of the December I.D. to all parties.

11. On January 3, 1991, Complainant filed exceptions to the October I.D. ("January Exceptions"). In the January Exceptions, Complainant alleged that travel out of the [*4] country precluded filing a response within the required time period (January Exceptions at 1-2). Complainant also alleged that the Commission was fully aware of Complainant's absence and, notwithstanding that knowledge, failed to dismiss the proceeding without prejudice (January Exceptions at 2-3). Complainant further alleged that the October I.D. violated the constitutional guarantees of due process and equal protection under state and federal law (January Exceptions at 2-3).

12. On January 8, 1991, OALJ informed the Complainant that the January Exceptions would not be considered because they were not timely filed as required by Section 5.33, 52 Pa. Code § 5.333, of our rules of practice and procedure.

13. On January 22, 1991, the October I.D. became a final order ("January 1991 Order") of the Commission based on the absence of timely filed exceptions or requests for review from the Commission. See 66 Pa.C.S. § 332(h).

14. On January 28, 1991, the Commission received another correspondence from Complainant, dated January 10, 1991, concerning the January 1991 Order (the "January 1991 Plea"). In the January 1991 Plea, Complainant claimed that its January Exceptions were timely [*5] filed and enclosed a receipt of the monies paid to the U.S. postal service as proof of timely filing (January 1991 Plea at 1-2). Complainant stated that "we" wanted to file an appeal based on denial of equal protection and due process of law. Complainant further stated that both Complainant and Complainant's spouse was willing to file affidavits to establish the facts (January 1991 Plea at 2).

15. On February 7, 1991, the Commission notified Complainant that the January 1991 Order had been rescinded because the January Exceptions were timely filed by Complainant. In mid-February 1991, both AT&T and Bell informed the Commission that the failure to receive copies of the January Exceptions precluded a response.

16. On February 25, 1991, Complainant notified the Commission that additional copies of the January Exceptions had been provided to Bell and AT&T. Complainant further claimed that copies of the January exceptions had been provided earlier to all parties by first class mail.

17. On May 16, 1991, the Commission rescinded the January 1991 Order. From May 1991 until September 1993, Complainant took no further action on this case.

18. By Order adopted March 23, 1993, the [*6] Commission issued another Opinion and Order (the "March 1993 Order"). In the March 1993 Order, the Commission reiterated their belief that the ALJ's dismissal of the Complaint with prejudice was appropriate (March 1993 Order at 5). However, the Commission went on to provide that Complainant would be given an additional 20 day period in which to file an Amended Complaint in light of the extenuating circumstances and the fact that Complainant's January Exceptions had been timely filed (March 1993 Order at 5).

19. On March 31, 1993, Complainant was provided notice of the March 1993 Order. Complainant was provided additional notice by registered mail on April 28, 1993.

20. On May 20, 1993, the OALJ provided a copy of the March 1993 Order to Complainants by First Class mail (the "May 1993 Notice"). In the May 1993 Notice, Complainant was advised that failure to comply the March 1993 Order within 10 days could result in dismissal of the case (May 1993 Notice at 1).

21. On June 17, 1993, Bell submitted a letter on the matter (the "Bell motion"). Bell sought dismissal with prejudice because Complainants provided no response to the May 1993 Notice.

22. On June 25, 1993, the Commission [*7] received a signed letter from one Atuahe (the "June motion"). Atuahe alleged that Complainant's absence from Philadelphia warranted dismissal without prejudice.

23. On August 19, 1993, Chief Administrative Law Judge Allison K. Turner issued an Initial Decision on Remand (the "August 1993 I.D."). In the August 1993 I.D., Chief ALJ Turner denied the June motion, granted the Bell motion and further precluded Agnes Manu from filing additional complaints, absent a threat to health and/or safety, until all accumulated arrearage were fully paid.

24. On September 9, 1993, the Commission declined to review the August 1993 I.D.

25. On September 15, 1993, Agnes Manu submitted extensive objections to the August 1993 I.D. ("September 1993 Objections"). Both the August 1993 I.D. and the September 1993 Objections are before us today.

Discussion

After review of the September 1993 Exceptions and the facts and history of this case, we hereby affirm Chief ALJ Turner's August 1993 I.D.

1. Administrative Notice of Certain Facts

We shall, pursuant to *66 Pa.C.S. § 332(e)* and *52 Pa.Code 5.408*, take administrative notice and official review of the following facts:

1. Agnes Manu, Stephen [*8] Atuahene, and Benjamin Atuahene are corporate officials of FAI. These three persons have filed a total of at least five Formal Complaints over the past five years pertaining to utility services provided by Respondents to FAI. The Formal Complaints are docketed at P.U.C. Docket Nos. F-09029141 (the instant proceeding); C-00935014; C-009034970; C-00913621 and C 00924554. On consideration of this matter, we direct the following:

2. Docket No. F-09029141 concerns the complaint of Agnes Manu on Account 215-877-0681 for utility services delivered by Respondents Bell and AT&T to FAI at 7000 Woodbine Street in the City of Philadelphia. As of the close of business on January 28, 1994, the arrearage on this account was \$ 25,775.61.

3. Docket No. C-00935014 concerns the complaint of Stephen Atuahene on Account 215-879-1790 for utility services delivered to FAI at 7000 Woodbine Street in the City of Philadelphia. As of the close of business on January 28, 1994, the arrearage on this account was \$ 1337.04.

4. Docket No. C-00934970 concerns the complaint of Benjamin Atuahene on Account 215-879-8428 for telephone services delivered to FAI at 7000 Woodbine Street in the City of Philadelphia. [*9] As of the close of business on January 28, 1994, the arrearage on this account was \$ 13,484.

5. Docket No. C-00913621 concerns the complaint of Stephen Atuahene-Frempong i.e., Stephen Atuahene, on Account 26-14-12-400812 for electric utility service delivered to FAI at 16 Roselyn Street in the City of Philadelphia. As of January 28, 1994, the arrearage on this commercial account was \$ 21,645.20.

6. Docket No. C-00924554 concerns the complaint of Stephen Atuahene-Frempong i.e., Stephen Atuahene, on Account 25-09-51-07-8816 for electrical service delivered by Respondents to FAI at 242 South 49th Street in the City of Philadelphia. As of January 28, 1994, the arrearage on the commercial account was \$ 24,124.21.

7. Pleadings filed by Agnes Manu at Docket No. F-09029141 have been provided on FAI stationery listing at least one corporate address for FAI as being 1650 Roselyn Street, Philadelphia.

8. In Docket No. C-00924554, telephone utility service account 215-877-0681 is listed as the corporate account of FAI.

9. In Docket No. F-09029141, utility service account 215-877-0681 is listed as the corporate account of FAI.

10. Stephen Atuahene a/k/a Stephen Frempong, Stephen [*10] Atuahene-Frempong is the spouse of Agnes Manu. See August, I.D. Furthermore, Benjamin Atuahene is the son of Stephen Atuahene and Agnes Manu. All three individuals reside at 7000 Woodbine Street in the City of Philadelphia.

11. F.A. Investment Group, Inc. obtains utility services from Respondents through the Atuahene-Manu residence at 7000 Woodbine Street in the City of Philadelphia.

2. The August 1993 I.D.

After providing a brief history of the proceeding, the August I.D. made several determinations in this matter (August I.D. at 1-4).

a. The Complaint and an Ongoing Scheme to Defraud.

The first determination concerns the specific Complainant in this case. The facts indicate that Complainants, acting jointly, have filed several formal and informal Complaints regarding utility service from, and concerning, the same address as that listed for FAI and, alternately, each other. In one proceeding, i.e., *Atuahene v. Bell*, P.U.C. Docket No. C-00934970, the record indicates that hearing notices by certified mail have been returned as unclaimed although first class notices have not been returned (*August 1993 I.D. at 4-5*). In yet another proceeding i.e., *F.A. [*11] Investment Group v. Bell*, P.U.C. Docket C-00935014, Bell indicates that similar facts are at issue and that the arrearage on that account as of the August 1993 I.D. was \$ 955.70. In yet another proceeding i.e., *Stephen Frempong v. Bell Telephone Company of Pennsylvania*, P.U.C. Docket No. C-00881729, (Order entered March 2, 1989), there was a finding that Stephen Atuahene and Stephen Frempong-Atuahene are the same person, that this person's spouse had the same name as the lead Complainant in this case, and that this Complainant had a relative named Catherine Manu. See *August 1993 I.D. at pp. 4-7*.

As a consequence, Chief ALJ Turner determined that a "scheme" of an "apparently ongoing" nature was operating from Complainants' address for the purpose of obtaining utility services without payment (March 1993 Order at 4-7). Chief ALJ Turner concluded that Complainant "should be precluded from filing any additional complaints" because of the "serious abuse of the Commission's process" that has taken place in this case. (March 1993 Order at 4-7).

b. The Substantive Relief.

Chief ALJ Turner urges us to dismiss this case with prejudice and to prohibit Complainants from [*12] filing additional formal or informal Complaints against Bell Telephone for services. Chief ALJ Turner made seven findings of facts in this case (*August 1993 I.D. at 7-8*). Those findings we incorporate by reference. Chief ALJ Turner then made two conclusions of law that we set forth below:

Conclusions of Law

1. The Commission has jurisdiction over the parties and the subject matter of this proceeding.
2. A party can be precluded from filing additional formal or informal Complaints with the Commission if there appears to be an abuse of the administrative process. *Schibelli v. Metropolitan Edison Company*, 68 Pa.P.U.C. 286 (1988).

Thereafter, Chief ALJ Turner ordered as follows:

1. That the request made by Agnes Manu to withdraw her complaint, without prejudice, is hereby denied;
2. That the Complaint filed by Agnes Manu against the Bell Telephone Company of Pennsylvania, docketed at F-09029141, is hereby dismissed with prejudice.
3. That any complaints filed by Agnes Manu against the Bell Telephone Company of Pennsylvania shall not be accepted by the Secretary's Bureau absent an allegation of an immediate threat to health and/or safety.
4. That the Bell [*13] Telephone Company of Pennsylvania shall not provide any telephone service to Agnes Manu until all arrearage accumulated by Agnes Manu have been paid in full.
5. That this case be marked closed.

3. Analysis of the Case

The August 1993 I.D.

After review, we shall affirm the August 1993 I.D. Additionally, we shall consolidate all other proceedings for utility services delivered to FAI through or on behalf of Agnes Manu, Stephen Atuahene and/or Benjamin Atuahene.

The September 1993 Objections.

We conclude that Complainant's September 1993 Exceptions are without merit. Our determination is based on our consideration of certain Preliminary Issues, Complainants' substantive allegations, and Complainant's Conclusions of Law which follow.

a. Preliminary Issues. The preliminary issues concern (1) Stephen Atuahene's standing to file the June motion, (2) Defective Notice, (3) Consolidation, (4) Wrongful Termination of service, (5) Wrongful Dismissal, and (6) Deprivation of due process and equal protection rights.

1. Stephen Atuahene's Representation

This issue concerns the standing of Stephen Atuahene to make the June motion on Complainants' behalf. Our determinations [*14] in such matters are governed by Section 1.21, *52 Pa.Code § 1.21* et seq., of our rules. Our rules provide, in relevant part, as follows:

§ 1.21 Appearance in person.

(a) An individual may appear in his own behalf in a proceeding.

§ 1.22 Appearance by attorney.

(a) A person may be represented in a proceeding by an attorney at law admitted to practice before the Supreme Court of Pennsylvania, or, if a public utility regulatory agency of another jurisdiction accords like privileges to members of the bar of this Commonwealth, the highest court of the other jurisdiction.

§ 1.23 Other representation prohibited at hearings.

(a) A person may not be represented at a hearing before the Commission or a presiding officer except:

(1) As stated in §§ 1.21 or 1.22 (relating to appearance in person; and appearance by attorney),

(2) As otherwise permitted by the Commission in a specific case.

We generally require that a non-lawyer Complainant-representative appearing before this Commission be authorized to act in that capacity by the Commission or a presiding officer. *Sid Smith v. GTE North, P.U.C. Docket No. C-00923867*, (Order entered January 10, 1994), Slip op. [*15] at 20-22. However, equitable considerations and Section 1.2(a) of our rules permit us to dispense with that requirement in exceptional circumstances.

We also note that our regulations at Sections 1.21(a) and 1.23(a) generally prohibit any person other than an attorney from appearing in a representative capacity unless we specifically rule authorize such an appearance by waiver under Section 1.23(a)(2). Because Mr. Atuahene never received that waiver nor are there equitable considerations sufficient to justify considering Mr. Atuahene to be acting in that capacity, we consider his actions to be those of a self-appointed "Complainant-Representative" when filing the June motion and that such action contravened our regulations. Therefore, we conclude that the June motion is meritless.

Our conclusion would be no different if, *arguendo*, Mr. Atuahene's actions were those of a business representative under Section 1.21(a) or that of a spouse. That is because, if the June motion was the pleading of a business representative under Section 1.21(a), the Complainant had actual notice of the March 1993 Order as early as March 1993 or as late as May 1993. Consequently, the purported explanation [*16] for Complainant's lack of response until September 1993 to the March 1993 Order, as set forth in the June motion and the September 1993 Objections, still remains subject to our fact finding authority under *AT&T Communications of Pennsylvania vs. Pennsylvania Public Utility Commission*, 130 Pa. Commonwealth Ct. 595, 568 A.2d 1362, 1364 (1990). Based on that authority, we would be inclined to find that Complainant's meritless given the facts and evidence.

Furthermore, if the June motion were considered the pleading of a spouse, we note that Agnes Manu had actual, if not constructive, notice of the March 1993 Order as early as March 1993 and as late as June 1993. Thus, Complainant had notice at least three months before Complainant filed the September 1993 Objections. In such circumstances, we are inclined to find those exceptions dilatory, at best.

Therefore, we conclude that the June Motion is nothing more than an attempt to continue the fraudulent scheme.

2. Defective Notice.

This issue concerns a general claim that defective notice precluded the filing of an amended complaint. Complainant supports this position by claiming that one cannot rely on the postal [*17] service to provide notice (September 1993 Objections at 1-16). We have heard this allegation in other proceedings. In this case, as in some of those cases, we find the notice allegation to be unconvincing and contrary to the facts as well as common experience.

We make this determination cognizant that, as a regulatory authority, we are agents of the Commonwealth and that, as such, we are expected to be guided by good faith, fidelity and integrity because we stand in a fiduciary relationship to the public. *Schwartz v. Urban Redevelopment Authority of Pittsburgh*, 192 A.2d 371, 374 (1963). Also, a regulatory agency, when acting in an adjudicatory nature involving substantial property rights, is bound by due process. *Soja v. Pennsylvania State Police*, 455 A.2d 613, 615 (1982). Although due process has never been precisely defined by the courts, the desiderata of administrative due process in Pennsylvania are notice, an opportunity to be heard and to defend in an orderly proceeding adapted to the nature of the case before the tribunal. *Conestoga National Bank v. Patterson*, 275 A.2d 6, 9 (1971). Of these, the most basic requirement is notice. See Pa. Coal [*18] *Mining Assn v. Insurance Dept.*, 370 A.2d 685, 692 (1977). We also know that failure to provide adequate notice invalidates any administrative action on the matter but that inadequate notice may be cured by actual notice. *Clark v. Department of Public Welfare*, 427 A.2d 712, 713 (1981).

In light of these considerations, we generally accord pro se litigants a certain degree of latitude in our proceedings. Sid Smith, P.U.C. Docket No. C-00923867, slip op. at 20; *Sentner v. Bell Telephone Company of Pennsylvania*, P.U.C. Docket No. F-00161106, (Order entered October 25, 1993), slip op. at 12-13 ("Sentner"). However, this latitude does not prevent us from holding that a party's subsequent absence from a properly noticed hearing was unjustified and dismissing the case. *Sentner* at 12-13. Also, we can issue a reprimand in some circumstances. Sid Smith at 20-23.

In this case, as in *Sentner*, the Complainant was provided with notices by registered, certified and first class mail. As in *Sentner*, we voided an initial determination in order to provide this pro se litigant with another opportunity to plead their case. Furthermore, as in *Sentner*, [*19] the initial certified notice was followed with a notice by first-class mail. Unlike *Sentner*, however, this particular Complainant received several additional rounds of notices and never acted on those notices.

After due consideration of these facts and precedent, we find that Complainant had timely and actual notice of the March 1993 Order. We also find that Complainant knew, or should have known, that Complainant was required to file an amended complaint. Our conclusion, that Complainant's claim is meritless, accords with Pennsylvania law. *Berkowitz v. Mayflower Securities, Inc.*, 455 Pa. 532, 317 A.2d 584 (1974); *Meierdierck v. Miller*, 394 Pa. 484, 147 A.2d 406 (1959); *Judge v. Celina Mutual Insurance Co.*, 303 Pa. Superior Ct. 221, 444 A.2d 658 (1982); *Shafer v. AITS, Inc.*, 285 Pa. Superior Ct. 490, 428 A.2d 152 (1981); *Christie v. Open Pantry Foodmarts, Inc. of Delaware Valley*, 237 Pa. Superior Ct. 243, 352 A.2d 165 (1975). n2

n2 We have, recently, expressed a desire to afford all individual complainants an opportunity to receive a hearing without being prejudiced by technical motions lodged against them by respondent-utilities. Those considerations are voided by the expressed lack of good faith on Complainants' part. See 52 Pa. Code § 64.1.

[*20]

3. The Scheme To Defraud and Consolidation.

Our third matter concerns the alleged scheme to defraud Respondents (August 1993 I.D. at 4-7; September 1993 Objections at 1-13). Complainant alleges that the finding of a scheme in the August 1993 I.D. violated Complainant's due process rights by wrongfully concluding, without giving Complainant an opportunity to respond, that a scheme exists in regard to obtaining utility services (September 1993 Objections at 1).

Chief ALJ Turner's August 1993 I.D. made an initial determination, based upon the administrative notice authority of the Commission under 52 Pa. Code § 5.408, that the Complaint was part of an overall pattern, indicating a scheme, involving the filing of Complaints and abuse of administrative process. Chief ALJ Turner supported that conclusion with a panoply of facts and evidence.

We believe that the allegations concerning due process are contradicted by Complainant's detailed response to the August 1993 I.D. Furthermore, Complainant's own detailed response in the September 1993 Objections contradict this claim. Also, the alleged violations of constitutional rights claimed in the September 1993 Exceptions are not [*21] detailed nor do they provide evidence to sustain that allegation. Additionally, the Complainant is silent on whether payment for any undisputed services has been tendered to the relevant utility as required by 52 Pa. Code § 56.141.

The facts and behavior by these particular Complainants lead us to conclude that Complainant has not complied with Sections 56.181 and 64.171 of our rules. These facts and behavior further convince us that the case is merely an attempt to avoid responsibility for utility services rendered.

In sum, we find that Complainant's allegations are meritless. We further conclude that Complainant's actions are part of a scheme to obtain utility service from the respondent utilities without reasonable efforts to pay for the same.

Given this conclusion and our concern for both the due process rights of Complainants and Respondents and our regulatory obligation to Pennsylvania's ratepayers and utilities, we further order consolidation, pursuant to Section 5.81(a) of our rules, to resolve all matters pertaining to that scheme. *Rierdon v. Bell Telephone Company of Pennsylvania*, P.U.C. Docket No. C-881874, (Order entered November 15, 1993), slip op. at [*22] 15-19 ("Commission may balance due process rights against other rights such as privacy"); *Pennsylvania Public Utility Commission vs. Dauphin Consolidated Water Supply Company & General Waterworks of Pennsylvania*, P.U.C. Docket No. R-00932604, (Order entered July 8, 1993), slip op. at 5-13, ("Consolidation authority of Commission guided by Pennsylvania's Rules of Civil Procedure and Commission regulations").

Consolidation allows us to efficiently and conclusively determine the amounts due and prevent abuse of administrative process. n3

n3 We agree with Chief ALJ Turner that a party may be precluded from filing additional formal or informal complaints with the Commission if there is an abuse of the administrative process. See August 1993 Order citing *Schibelli v. Metropolitan Edison Company*, 68 Pa.P.U.C. 286 (1988); also see *Arthur Lilly v. William H. Smith, Retired Chairman*, Pennsylvania Public Utility Commission, Docket No. C-00913773 (Order entered April 9, 1993), wherein we directed that further filings raising the same issues addressed in a matter shall be dismissed without further proceeding.

4. Wrongful Credit Report of Respondent and Termination of [*23] Service.

Our fourth matter concerns two allegations. The first allegation is that Bell's wrongful reporting of Complainant's credit status caused irreparable harm to Complainant's business and that, because we lack authority to remedy that harm, this matter was beyond our jurisdiction (September 1993 Objections at 4-5; Conclusion of Law 1). The second allegation is that Respondent has wrongfully terminated service at some unidentified time in the past.

Complainant correctly states that we lack jurisdictional authority over certain actions that sound in contract or damages. *Feingold v. Bell of Pennsylvania*, 477 Pa. 1, 383 A.2d 791, 793, (1977) ("Commission has no power to award damages for breach of contract"); *DiSanto v. Dauphin Consolidated Water Supply Company*, 291 Pa. Superior Ct. 440, 436 A.2d 197, 201-202, (1981) ("Commission has no authority over tort law or contractual obligations"); *West Penn Power Company v. Pennsylvania Public Utility Commission*, 104 Pa. Commonwealth Ct. 21, 521 A.2d 75, 79 (1987). We have long refused to entertain actions that go to such matters. *Turtzo v. Bangor Water Company*, 28 Pa.P.U.C. 404, 405 (1950). Therefore, we recognize [*24] that our jurisdictional authority in certain areas must necessarily be concurrent with that of the general courts of the Commonwealth. n4

n4 See Sentner for a more extensive discussion of agency jurisdiction.

In addition, Complainants' claim that our limited jurisdiction precludes the Commission from hearing this case mistakenly assumes that shared jurisdiction voids jurisdiction. There are several instances in which the courts concluded that concurrent jurisdiction, as opposed to the court's general jurisdiction, is warranted given our expertise and enabling statute. See, Sentner at 6-7.

Furthermore, Complainant's allegations contradict the alleged lack of jurisdiction. Complainant cannot invoke our jurisdiction over an allegedly wrongful termination of service on the one hand, while, on the other hand, claim that the wrongful termination of service is a matter beyond our jurisdiction because we cannot compensate for the damages occasioned by that wrongful termination. Compare September 1993 Objections at 6-8 with 52 Pa.Code 64.63 and 64.122. Therefore, we conclude that this allegation is meritless.

The second allegation concerns the alleged wrongful termination [*25] of service. We note that this allegation raises an issue not previously raised in the Complaint in 1990. Because this issue is being raised for the first time, we need not consider it further.

5. Wrongful Dismissal of Complaint with Prejudice.

This matter concerns Complainant's allegation that Chief ALJ Turner wrongfully dismissed the Complaint as it pertained to both Bell and AT&T. Chief ALJ Turner's action, in light of the facts of this case, is not a wrongful action given that the delayed consideration was largely the result of Complainant's failure to file an amended complaint.

6. Violation of Complainant's Due Process and Equal Protection Rights Under State and Federal Law.

a. Due Process.

We find this allegation as meritless as the prior allegations for several reasons. First, it was the Complainant, and not the Commission, that failed to file any amended complaint. Also, the Commission, and not the Complainant, has waited since our determination in December 1990 for Complainant to cure the pleading defects. In addition, the Commission, and not the Complainant, has waited for several years for an amended complaint to be filed although this Complainant [*26] knew, or should have known, as early as 1990 or as late as 1993, that an amended complaint was required.

Complainant's failure to act largely contributed to any adverse impact on Complainant's due process rights. Also, the failure to act operated to the prejudice of Respondents. Consequently, we consider this allegation meritless.

b. Equal Protection.

We also consider this allegation without merit. Complainant fails to specify exactly how she was denied equal protection of the law in this matter. Consequently, we fail to discern any violation of such rights.

We have previously set aside previous orders in this case so that this pro se Complainant could refine their case. However, this Complainant took no action. Further, we find the explanation for that inaction to be inadequate.

Therefore, we conclude that Complainant fails to establish any irrationality in our approach. On the contrary, the indulgent accommodation given these Complainants may have encouraged the arrearage.

4. Complainant's Substantive Allegations.

Complainant's substantive allegations concern (1) Judicial Discretion, (2) Constitutional Violations, (3) Lack of Jurisdiction and (4) Abuse [*27] of Discretion. We consider each of these matters seriatim.

a. Judicial Discretion.

Complainant alleges that Chief ALJ Turner abused judicial discretion in several ways. Complainant first alleges that Chief ALJ Turner abused discretion by wrongfully concluding that Complainant is related to other parties in several other proceedings arising from utility services delivered to these Complainants at 7000 Woodbine Street in the City of Philadelphia.

This allegation is contradicted by several facts. These Complainants all are using Complainant's address at 7000 Woodbine Street as the locus for receipt of utility service. FAI, the business entity, has filed complaints from this aforementioned residential address. Agnes Manu alleges unspecified harm to an unidentified business reputation, as a result of Respondents' behavior, although the record in this proceeding shows that the only business with which Manu is associated is FAI -- and Manu claims they are separate entities. Further, Agnes Manu has filed complaints using FAI's stationery. Finally, the record in P.U.C. Docket No. C-00881729 and these consolidated cases collectively demonstrate that Agnes Manu, Stephen Atuahene [*28] and Benjamin Atuahene are related, and that all three persons bear a relationship to FAI. Consequently, these facts do not establish any abuse of judicial discretion.

However, notwithstanding the Chief ALJ's determination of a familial relationship, we would reach the same result and affirm the holdings of the ALJ if the improper scheme were perpetrated by strangers or non-familial persons. Therefore, the existence or lack of existence of a family relationship is not essential to our conclusion that Agnes Manu, Stephen Atuahene, and Benjamin Atuahene are acting in concert.

The second and third allegations, that Chief ALJ Turner abuses judicial discretion by permitting Respondent to use their "monopoly position" to intimidate customers and that Chief ALJ Turner wrongfully extended this action to include both Bell and AT&T, are undercut by the facts. The record is devoid of any factual basis for concluding that Respondents have intimidated this Complainant. If anything, we are concerned by the fact that Respondents took so little action against the Complainant in light of the events in this case. But most importantly, Complainant's own allegations specifically named both [*29] Bell and AT&T as parties with whom Complainants have a billing dispute. Compare September 1990 Complaint at 1 with September 1993 Objections. This allegation, therefore, is meritless.

The fourth allegation is that Chief ALJ Turner has abused judicial discretion by finding that Complainant and F.A. Investment, Inc. were related entities. This allegation is undercut by the facts. Although we recognize that these Complainants and FAI may separate entities for other legal purposes, we deem the contrary to be true for the limited purpose of this proceeding based on Pennsylvania law.

We do so, in part, because of the extensive intermingling of FAI's corporate form with these Complainants' personal affairs. For example, most of the pleadings in these consolidated cases have been filed from, and concern utility services delivered to, Complainants' personal residence on behalf of, or in the name of, FAI. Furthermore, Complainants have used FAI stationery and FAI's corporate form to secure utility services that benefitted Complainants' personal interests while attempting to insulate themselves from personal responsibility for those services.

For example, the Complaint by Agnes [*30] Manu in Docket No. F-0929141 implies that the Complaint concerns personal residential service which, to an extent, is true although the account at issue also concerns Agnes Manu's business. Such facts, in addition to those set forth more fully above and below, sustain our affirmation of Chief ALJ Turner's finding of a close, proximate and intertwining relationship concerning utility services.

However, Pennsylvania law does not hold that such a close, proximate and intertwining relationship, standing alone, is sufficient to justify disregarding the corporate form for the purposes of holding others personally liable for a corporation's obligations. Other considerations, such as unusual circumstances, fraud, prevention of harm, and protection of the public interest, must be shown before such a relationship will sustain a disregarding of the corporate form. On this vexatious matter, Justice Cardozo once opined that although the entire issue "is still enveloped in the mists of metaphor," the appropriate tests are "honesty and justice." *Berkey v. Third Avenue Ry. Co.*, 244 N.Y. 84, 155 N.E. 58 (N.Y. 1926).

Fortunately, Pennsylvania's law is well developed on matters pertaining [*31] to this issue. And, the law holds that corporate form will be disregarded whenever justice or public policy demands and when the rights of innocent third parties are not prejudiced nor the theory of the corporate veil rendered useless. See *Sams v. Redevelopment Authority of City of New Kensington*, 431 Pa. 240, 244 A.2d 779, 781 (1968) ("Sams") ("Corporate form will be disregarded when the entity is used to defeat public convenience, justify wrong, protect fraud or defend crime"); *Great Oaks Building & Loan Ass'n v. Rosenheim*, 341 Pa. 132, 19 A.2d 95, 97, (1941) ("Great Oaks") ("Pennsylvania's courts will not hesitate to treat person and corporation as identical whenever justice and public policy demand and when rights of innocent third parties are not prejudiced thereby nor theory of corporate entity made useless"); *Pasos v. Ferber*, 263 F.Supp 877, (D.C.M.D.Pa.) affirmed 386 F.2d 452, (1967) ("Pasos") ("Corporate form can be disregarded if corporate purpose is to continue in business without responsibility to one's creditors"); *Reverse Vending Associates v. Tomra Systems US, Inc.*, 655 F.Supp. 1122 (E.D. Pa. 1987) ("Reverse Vending") ("Limited liability [*32] inherent in a corporation's separate existence will be disregarded when such existence is misused as a means or intermediary for perpetration of fraud, illegality or injustice"); *Wicks v. Milzoco Builders, Inc.*, 503 Pa. 614, 470 A.2d 86, 89-90, (1983) ("Corporate form can be disregarded when corporation is not a bona fide independent entity").

These substantive principles of law also extend to the adjudications of administrative bodies at both the federal level and within Pennsylvania. *U.S. v. Sutton*, 796 F.2d 1040, 1060 (1986) ("Federal agencies may pierce corporate form for violations of federal regulations"); *Kaites v. Commonwealth of Pennsylvania, Department of Environmental Resources*, 108 Pa. Commonwealth Ct. 267, 529 A.2d 1148, 1150-1152, (1987) ("Pennsylvania agency record may support piercing of corporate veil although such action was not a primary ground for this case nor warranted by the facts") ("Kaites"); *Commonwealth of Pennsylvania, Department of Environmental Resources vs. Peggs Run Coal Co.*, 55 Pa. Commonwealth Ct. 312, 423 A.2d 765, 766, 768-769 (1980) ("Demurrer denied when agency allegations of material facts sufficient to justify basis for imposing [*33] legal liability on individuals by disregarding corporate form") ("Peggs Run").

The factors typically weighed when considering whether to disregard a corporate form in Pennsylvania include inter alia undercapitalization, failure to adhere to corporate formalities, substantial intermingling of corporate and personal affairs, and use of corporate and personal affairs, and use of corporate form to perpetrate a fraud. *Commonwealth by Preate v. Events Intern, Inc.*, 137 Pa. Commonwealth Ct. 271, 585 A.2d 1146, 1150, (1991) ("Events Intern, Inc."); *Kaites*, 108 Pa. Commonwealth Ct. 267, 529 A.2d at 1151.

In this case, the persistent and ongoing refusal of FAI to pay Respondents for delivered utility services, coupled with use of our administrative process to prolong consideration of the party responsible for payment for those services, is indicative of undercapitalization.

In addition, the record is replete with persistent failures to adhere to corporate formalities. For example, Agnes Manu's complaint in Docket No. F-09029141 concerning Account 215-877-0618 provides no indication, as does the Complaint in Docket No. C00924554, that Account 215-877-0618 is the corporate [*34] account of FAI. In fact, the reader is misled as to the actual entity served by, and arguably responsible for, the Account. In another example, the Complaint filed by Stephen Atuahene on behalf of FAI suggests that the residence of FAI's officer and the corporation's residence are identical. In fact, FAI's residence is at 7000 Woodbine Street according to the Complaint filed in Docket No. C-00935014.

Complainant's failure to adhere to corporate formalities is also evident in the Complaints. In Docket C-901621, Stephen Atuahene indicates that his personal residence and FAI's corporate residence are identical. In the complaint filed at Docket F-09029141 filed in 1990, Agnes Manu's Complaint indicates that her personal telephone service account is identical to that of FAI according to page 2 of the Complaint filed on behalf of FAI at Docket C-00924554 in 1992.

Further, the Complainants' use of the corporate form to perpetrate their fraud in regard to utility services, and abuse of our administrative process to further that scheme, is evident in other respects. Complainants have used the corporate cover of FAI to obtain services for FAI at 7000 Woodbine [*35] Street, 1650 Roselyn Street, and 242 South 49th Street in the City of Philadelphia in, respectively, Docket Nos. F-9029141, C-90013621 and C-00924454.

Complainants, after accruing large arrearage, typically file formal and informal Complaints to delay termination of service. Complainants have failed to appear at subsequently scheduled hearings and suffered orders to be entered against them by default. Complainants filed tardy exceptions to default orders aimed at setting aside the default. After setting aside the default, Complainants have, again, failed to appear or file timely pleadings. Usually, such failure is then followed by a request that the case be dismissed without prejudice. See e.g., P.U.C. Docket Nos. F-09029141, C-00935014, C-00934710, C-00913621 and C00924554; *August 1993 I.D. at 4-7*.

The unusual abuse of administrative process has been well documented by Chief ALJ Turner in the August 1993 I.D. Based upon this practice over the past five years or so, Complainants have managed to accrue a substantial arrearage on several accounts.

Therefore, our decision to disregard the corporate form, as permitted under Ashley, is amply supported. Our conclusion [*36] in this case is only intended to prevent these specific Complainants from continued abuse of administrative process aimed at securing the benefits of utility service without shouldering the burden of payment for those same services.

b. Constitutional Violations.

Complainants allege that Respondents' service termination and reporting of the arrearage to an unidentified credit agency violated their constitutional rights. Based on our limited authority to pass on constitutional claims, we conclude that these claims are meritless.

The harm to constitutional rights, occasioned by an unspecified yet wrongful termination of service, is a novel allegation which Complainants have never raised in this case. Consequently, we disregard this allegation consistent with the requirements of due process because Respondents have not had a chance to respond to that allegation. However, if we were to consider this allegation, we would be inclined to consider the allegation meritless because neither the pleadings nor the evidence are sufficient to sustain such a finding. Complainant fails to specify exactly what violation of Sections 56.71 et seq., 56.81 et seq., 64.61 et seq., or 64.121 [*37] et seq. occurred in this case and how constitutional rights were harmed by such action.

The harm to constitutional rights, occasioned by a wrongful report to an unidentified credit agency, is also a novel allegation which Complainants have not raised previously in this case. Consequently, we will disregard this allegation consistent with the requirements of Respondents' due process rights. However, if we were to consider this allegation, we would be inclined to consider the allegation meritless because neither the pleadings nor the evidence are sufficient to sustain such a finding. Complainant fails to specify exactly what violation of Sections 56.71 et seq., 56.81 et seq., 64.61 et seq., or 64.121 et seq. occurred in this case and how constitutional rights were harmed by such a violation.

The harm to constitutional rights, occasioned by a wrongful harm to a business interest, is yet another allegation raised for the first time in the September exceptions. Consistent with considerations of due process, we refuse to consider that allegation. However, if we were to consider this allegation, we would be inclined to consider the allegation

meritless because neither the business.[*38] interest nor the alleged violation are identified with sufficient specificity so as to enable us to reach a conclusion.

We also hold that the allegation, concerning deprivation of a right to a trial by jury, is meritless. Complainant fails to explain exactly how the August 1993 I.D. vitiated the right to a jury trial granted by *66 Pa.C.S. § 901*.

The final claims regarding a lack of jurisdiction and abuse of discretion have been addressed and need not be repeated herein. However, we will briefly address the allegation concerning lack of notice under Chapter 56 and 64. We conclude that Complainant's allegation, that termination of service without notice is a violation of due process, is contradicted by our rules. For example, Sections 56.98 and 64.75 permit a utility to terminate without notice in some limited circumstances. Because neither party has raised this point, we will not consider it further except to note that this vague allegation ignores that circumstance.

e. Complainant's Conclusions of Law.

Our last matter concerns Complainant's conclusions of law. Complainant makes five conclusions of law that we repeat verbatim:

1. The Commission has no jurisdiction over [*39] the parties and the subject matter of this proceeding. For:

a. Bell terminated the complainant's service even though the case was pending before the Commission without any notification and in violation of complainant's "due process" rights under the amendment to the U.S. Constitution.

b. Bell sent adverse material, information, data to the Credit Bureau and other financial institution resulting in denial of credit to complainant in violation of the law which automatically removes jurisdiction to court of general jurisdiction.

2. The complainant's rights under the equal protection and due process clause of the 14th amendment to the U.S. Constitution had been violated in view of a) the termination of service of complainant's phone service while this case is pending[;] b) and subsequent Bell's action of sending information to various entities that complainant owes it \$ 25,000 while the actual toll resulting to Bell is less than \$ 2,000 and while said bill was before this Commission as a disputed account.

3. The complainant's right under the 7th amendment to the U.S. Constitution could not be protected sufficiently enough under the Commission's procedure and adjudication especially [*40] with reference to complainant's right to TRIAL BY JURY.

4. The Judges' initial decision was a gross abuse of judicial discretion and violates complainant's rights of equal protection under the law.

5. This case should be withdrawn by Complainant without prejudice.

The first conclusion concerning jurisdiction is undercut by Complainant's request that we invoke our jurisdiction to remedy the allegedly wrongful termination of service. This conclusion is further undercut by the fact that the Commission shares concurrent jurisdiction with the general courts of the Commonwealth on many of the issues raised in this Complaint.

The second conclusion, concerning violations of constitutional rights, is undercut by Complainant's failure to utilize the several opportunities, provided by the Commission, to amend, raise, refine and argue their position in an amended complaint. A party cannot, after being provided ample opportunity to amend the vague allegations of a badly worded Complaint, be heard to complain that a Commission's determination based on that faulty complaint, in the face of a party's failure to timely amend, violates constitutional rights.

The third conclusion, concerning [*41] denial of the right to a jury trial, is undercut by Complainant's failure to specify how our decision undercuts that *66 Pa.C.S. § 901* right.

The fourth conclusion, concerning an alleged abuse of discretion, is undercut by the facts, evidence and procedural history of this case. These matters, taken collectively, fail to establish any substantial instance where, upon reaching a conclusion of law, the Commission has overridden or misapplied the law. *Mary K. Cashdollar v. Commonwealth of Pennsylvania, State Horse Racing Commission, 143 Pa. Commonwealth Ct. 640, 600 A.2d 646, 650 (1991)*.

The fifth conclusion, concerning dismissal of the case without prejudice, is undercut by the facts. The Commission has provided ample opportunity to amend the complaint, refine the allegations, and otherwise detail any alleged harm.

However, Complainants have failed to do so to their detriment. Complainant cannot be permitted to complain of harm to constitutional rights, occasioned by Complainant's own tardiness, in order to prevent the Commission from implementing a final order that might be adverse to their fraudulent scheme.

Although tardiness might normally justify dismissing a case with [*42] or without prejudice, we underscore our belief that this proceeding is not a normal case. We will not dismiss a case when, as here, dismissal only furthers a fraudulent scheme, or precludes us from making a final determination on the total arrearage, or would otherwise prevent an appropriate allocation of responsibility for an arrearage.

CONCLUSION

Based on the foregoing, we shall adopt in all material respects the decision of Chief Justice Turner. We only modify her recommendation concerning the filing of complaints against the Respondents to hold that such filings, to the extent they pertain to the arrearages which are the subject of the instant proceeding, shall be dismissed without further proceeding. See *Arthur Lilly v. P.U.C.*, supra.; THEREFORE,

IT IS ORDERED:

1. That the Motions to Dismiss with or without prejudice be, and hereby are, denied.
2. That the Complainants in the following proceedings be, and hereby are, consolidated with the instant proceeding: Docket Nos. C-00935014, C-00934970, C-00913621 and C-00924554.
3. That the failure of Complainants in the consolidated proceedings to pay all arrearages on the accounts identified in this consolidated [*43] proceeding be, and hereby is, deemed to be grounds for termination of service in accord with Chapters 56 and 64 of the Commission's rules of administrative practice and procedure.
4. That Complainants be, and hereby are, precluded from filing further complaints, whether of a formal or informal nature, for the arrearages for utility services which are the subject of these consolidated proceedings until all arrearages governed by this case are paid in full and that, further, the filing of any complaint pertaining to the arrearages which are the subject of this proceeding shall be dismissed without further proceedings.
5. That the filing of any other pleading in these consolidated cases, concerning the same subject matter be, and hereby is, deemed not to stay implementation of this Opinion and Order.

Legal Topics:

For related research and practice materials, see the following legal topics:

Communications LawU.S. Federal Communications CommissionJurisdictionEnergy & Utilities LawTransportation & PipelinesElectricity TransmissionEnergy & Utilities LawUtility CompaniesService Terminations

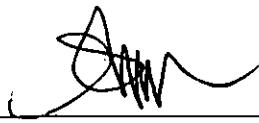
**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

MARK MAZZA	:	
Complainant	:	
v.	:	DOCKET NO. C-2012-2318472
	:	
PECO ENERGY COMPANY	:	
Respondent	:	

VERIFICATION

I, Shawane L. Lee, hereby declare that I am an attorney representing 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 14, 2012



Shawane L. Lee

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AUG 14 2012

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

MARK MAZZA	:	
Complainant	:	
v.	:	DOCKET NO. C-2011-2235775
	:	
PECO ENERGY COMPANY	:	
Respondent	:	

CERTIFICATE OF SERVICE

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

Mark Mazza
1271 Farm Road
Berwyn, PA 19312

RECEIVED

AUG 14 2012

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

Dated at Philadelphia, Pennsylvania, August 13, 2012.



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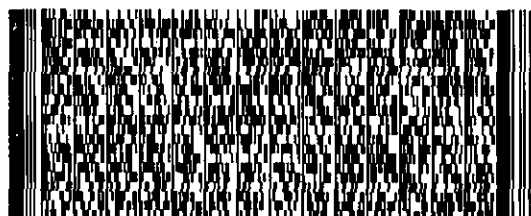
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