

Legal Department

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August 31, 2012

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

Re: Mohamad Mansaray v. PECO Energy Company
PUC Docket No. C-2011-2258219

Dear Ms. Chiavetta:

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

—	Answer (1 original)
—	Answer & New Matter (1 original)
—	Motion to Dismiss (original)
—	Motion for Judgment on the Pleadings (1 original)
—	Preliminary Objection (1 original)
—	Exceptions (1 original)
<u>X</u>	Reply Exceptions (1 original)
—	Main Brief (1 original)
—	Reply Petition (1 original)

I have enclosed a Certificate of Service showing that a copy of the above document was served on the interested parties. Thank you for your time and attention on this matter.

Very truly yours,



Shawane Lee
Counsel for PECO Energy Company

SL/lo

Enc.

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

REPLY EXCEPTIONS

PECO Energy Company (“PECO Energy”) hereby replies to the Exceptions filed by Mohamed Mansaray (“Complainant”) in the above-referenced matter on August 22, 2012. On August 19, 2011, Complainant filed a formal complaint against PECO Energy. In his formal complaint, Complainant claims that PECO Energy started billing him for service at 4419 Frankford Road, Philadelphia, PA in February 2011, although he signed a Lease Agreement for the premises in April 2011. Consequently, he should not be held responsible for the bills in February and March 2011. Respondent, PECO Energy filed an Answer on September 8, 2011, stating that the Complainant had submitted a Lease Agreement, stating he had taken possession of the property effective February 1, 2011. Accordingly, the Complainant was properly billed for service from February 1, 2011. A hearing was held before Administrative Law Cynthia Williams Fordham on February 23, 2012. ALJ Fordham issued an Initial Decision on July 27, 2012, wherein she held inter alia:

The documentary evidence in the record concerning the date that the Complainant should be responsible for electric service consists of the commercial application which was submitted by the Complainant and/or his niece and the lease for the service address. The Complainant was responsible for both documents. The Complainant denied that the lease was signed in February. He points to page 5 of the lease where the date is crossed out and “4/2/11” was added (PECO Ex. 3 at 5). However, there are numerous places on the lease that indicate that the lease started on February 1, 2011, and that it was signed on that date. Furthermore, the February 1, 2011 date was placed on the commercial application for service (PECO Ex. 2). He contended that his niece made a mistake when she put the February 1, 2011 date on the application (Tr. 17, 19). Nevertheless, he said that she completed the service application with his authorization (Tr. 17).

Based on the evidence in the record, the Complainant and Ms. Sheriff are responsible for paying the bill for service at the service address beginning on February 1, 2011. This is supported by the commercial service application and the lease for the service address.

See ALJ Fordham, Initial Decision, dated 7/27/12, attached hereto as Exhibit “1”.

The Commission should sustain the initial decision of ALJ Fordham. Complainant does not allege that the ALJ made an error of law or abused her discretion in any manner. Instead, Complainant excepts to the decision issued by ALJ Fordham, because he simply disagrees with the ALJ’s decision and believes he submitted adequate proof to the ALJ to support his position. Specifically, in his exceptions the Complainant states:

The lease that was presented to the courts by PECO’s attorney was also an issue, the lease was prepared in February however the agreement went into affect on April 2, 2011, because I signed the agreement it was all the more reason why I crossed the the (sic) preparation date of February 1, 2011 and replaced my (sic) the April’s date, as well established that it was a mistake on any legal paper, signatory has all the right to cross out the wrong information and present the correct one on page 2.

See Complainant’s Exceptions, attached hereto as Exhibit “2”.

During the hearing, the Complainant disputed PECO Energy Regulatory Assesor, Renee Tarpley’s testimony that he was present at PECO Energy the day the commercial application was submitted. Ms. Tarpley testified that the Complainant came into the office in May 2011 to apply for service and supplied identification at the time of the visit. (Tr. 29). Now, in his Exceptions the Complainant seeks to shift his burden of proof to PECO Energy by requesting that PECO Energy provide videotape confirmation that he walked into PECO Energy’s office that day. However, it is the Complainant that bears the burden of proof, not PECO Energy. Feinstein v. Philadelphia Suburban Water Company, 50 Pa. P.U.C. 300 (1976).

Pursuant to 52 Pa. Code 5.533(b), “[e]ach exception must . . . identify the finding of fact or conclusion of law to which exception is taken and cite relevant pages of the decision,” and “[s]upporting reasons for the exceptions shall follow each specific exception.” Complainant’s attempt to further litigation in this matter by simply disagreeing with the outcome of the Initial

Decision without identifying any specific error of law or abuse of discretion fails to satisfy the requirements is procedurally improper and should be dismissed summarily.

By way of further response, the record clearly demonstrates that the Complainant submitted a signed Lease Agreement, effective February 1, 2011. Yet, the Complainant now says there was a mistake in the Lease Agreement. The record also clearly demonstrates that the Complainants' applied for commercial service and noted on the application that service was to become effective February 1, 2011. Yet, the Complainant states that his niece, Fatmata Sheriff, made a mistake when she told PECO Energy that the lease started on February 1, 2011. (Tr. 14). Clearly, the mistakes that have been made are the Complainant's mistakes. The record is clear that PECO Energy did not make an error in billing the Complainant effective February 1, 2011. Specifically, the record demonstrates that:

- The Complainant and his niece, Fatmata B. Sheriff, leased the property 4419 Frankford Avenue, Philadelphia, PA 19124 from Harry Pries (Tr. 8, 25; PECO Ex. 3).
- The Lease Agreement commencement date is February 1, 2011. Next to the signatures of Ms. Sheriff and Mr. Pries the lease is dated "2-1-11". (Tr. 11, 25, 27; PECO Ex. 3).
- The Lease Agreement was provided to PECO Energy and indicated that Fatmata Sheriff and Mohamad Mansaray were the lessees and that the lease commenced on February 1, 2011 (Tr. 26; PECO Ex. 3).
- On the commercial service application, Fatmata Sheriff and Mohamad Mansaray listed February 1, 2011, as the date responsible and the date the lease started. (Tr. 25; PECO Ex. 2).
- A copy of the Ms. Sheriff's driver's license and social security card and Mohamad Mansaray's driver's license was attached to the application for commercial service. (Tr. 29; PECO Ex. 2).
- In the June 28, 2011 Bureau of Consumer Services decision, the Commission agreed that PECO Energy could begin billing the Complainant from February 1, 2011, the date on the lease that the Complainant provided (Tr. 28; PECO Ex. 3).

ALJ Fordham correctly concluded, that the Complainant has not met his burden of proof in this matter pursuant to 66 Pa. C.S. § 332(a). Accordingly, ALJ Fordham's decision to dismiss the Complainant's case against PECO Energy should be upheld.

For the reasons set forth above, PECO respectfully requests that the Commission deny the Exceptions and issue an Order upholding the Initial Decision in its entirety.

Respectfully submitted,



Shawane L. Lee
Counsel for PECO Energy Company
2301 Market Street, S23-1
P.O. Box 8699
Philadelphia, PA 19101-8699
Direct Dial: 215.841.6841
Fax: 215.568.3389

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

MOHAMAD MANSARAY

COMPLAINANT

v.

PECO ENERGY COMPANY,

RESPONDENT

:
:
:
:
:
:
:
:
:
:
:
:

Docket Nos. C-2011-2258219

CERTIFICATE OF SERVICE

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

**Mohamed Mansaray
4419 Frankford Avenue
Philadelphia, PA 19124**

Dated at Philadelphia, Pennsylvania, August 31, 2012



Shawane L. Lee
Counsel for PECO Energy Company
2301 Market Street, S23-1
P.O. Box 8699
Philadelphia, PA 19101-8699
Direct Dial: 215.841.6841
Fax: 215.568.3389

EXHIBIT “1”

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Mohamad Mansaray	:	
	:	
v.	:	C-2011-2258219
	:	
PECO Energy Company	:	

INITIAL DECISION

Before
Cynthia Williams Fordham
Administrative Law Judge

HISTORY OF THE PROCEEDING

On August 16, 2011, Mohamad Mansaray (“Mansaray” or the “Complainant”) filed a complaint with the Public Utility Commission (“Commission”) against PECO Energy Company (“PECO” or “Respondent”). The Complainant alleged the following: that there are incorrect charges on the bill; and that the Respondent started billing him in February when the lease was signed in April.

On September 8, 2011, the Respondent, through its counsel, filed an Answer and New Matter with a notice to plead. In its Answer, the Respondent denied that there are incorrect charges on the bill. The Respondent averred that when the Complainant applied for service he submitted a lease indicating that he took possession of the property on February 1, 2011.

By hearing notice dated December 14, 2011, the hearing was scheduled and the case was assigned to the undersigned.

The hearing in this matter was held on February 23, 2012, in the Philadelphia Regional Office before Administrative Law Judge Cynthia Williams Fordham. The Complainant, Mohamad Mansaray, testified in support of the complaint. Tishekia Williams, Esquire, represented PECO Energy Company. The Respondent presented one witness, Renee Tarpley, a senior regulatory assessor for the Respondent, who testified and sponsored four exhibits: PECO Exhibit 1 - the account statement for 4419 Frankford Avenue, Philadelphia, PA (service address), for the period from February 1, 2011, through February 15, 2012; PECO Exhibit 2 – the Complainant’s application for commercial service at the service address; PECO Exhibit 3– the Complainant’s lease for service address; and PECO Exhibit 4 - Bureau of Consumer Services decision dated June 28, 2011.

The record in this case consists of a forty one-page transcript of the hearing and four exhibits¹. The record closed on March 9, 2012, when the transcript was received.

FINDINGS OF FACT

1. The Complainant is Mohamad Mansaray, 4419 Frankford Avenue, Philadelphia, PA. 19124, the service address.
2. The Respondent in this proceeding is PECO Energy Company.
3. The Complainant and his niece, Fatmata B. Sheriff, leased the property 4419 Frankford Avenue, Philadelphia, PA. 19124 from Harry Pries (Tr. 8, 25; PECO Ex. 3).
4. On the lease the commencement date of the lease is February 1, 2011. Next to the signatures of Ms. Sheriff and Mr. Pries the lease is dated “2-1-11”. On page 5 of the lease, the date next to Ms. Sheriff’s name is crossed out and “4/2/11” was added (Tr. 11. 25, 27; PECO Ex. 3).

¹ The Complainant objected to the following exhibits for the following reasons: PECO Ex. 1 because it referred to bills for February and March 2011; PECO Ex. 2 because it included the February 1, 2011 date; PECO Ex. 3 because it included the February 1, 2011 date; and PECO Ex. 4 because he disagreed with the decision (Tr. 38-40). The objections were noted and the exhibits were admitted into evidence.

5. The lease that the Complainant provided to the Respondent listed “2/1/11” as the start of the lease. The Complainant wrote “4/1/11” beside his name on one page of the lease (Tr. 60; PECO Ex. 3).
6. The Respondent left a failure to apply notice at the service address in May 2011 (Tr. 32).
7. The Complainant and Ms. Sheriff went to the Respondent’s office and applied for electric service at the service address (Tr. 29).
8. The application for commercial service was signed by Ms. Sheriff on May 6, 2011. On the application, “2/1/11” was listed as the date responsible. The term of the agreement with Mr. Pries is listed as “February 1st 2011-January 30th 2013” (Tr. 25; PECO Ex. 2).
9. A copy of Ms. Sheriff’s driver’s license and social security card and the Complainant’s driver’s license was attached to the application for commercial service (Tr. 29; PECO Ex. 2).
10. The Respondent established service at the service address in the names of Ms. Sheriff and the Complainant effective February 1, 2011 (Tr. 23).
11. The bills for the service address for service in February and March 2011 were: for service from February 1 to February 13- \$98.90; for service from February 13 to March 14- \$305.97; and for service from March 14 to April 12- \$289.72 (Tr. 23; PECO Ex. 1).
12. The Complainant filed an informal complaint on June 15, 2011 (PECO Ex. 4).

13. The Bureau of Consumer Services decision dated June 28, 2011 agreed that the Respondent could begin billing the Complainant on February 1, 2011 (Tr. 27, 28; PECO Ex. 4).

14. The Complainant made one payment on the account in the amount of \$800.00 on February 6, 2012 (Tr. 24; PECO Ex. 1).

15. At the time of the hearing, the Complainant's balance was \$2,179.49 (Tr. 23; PECO Ex. 1).

DISCUSSION

Pursuant to Section 332(a) of the Public Utility Code, 66 Pa.C.S. § 332(a), the burden of proof is on the proponent of a rule or order. In this proceeding, the Complainant is the proponent of a rule or order. Therefore, the Complainant bears the burden of proving by a preponderance of the evidence that the Respondent has violated the Public Utility Code or a regulation or order of the Commission. *Se-Ling Hosiery v. Margulies*, 364 Pa. 45, 70 A.2d 854 (1950). The Complainant must show that the utility is responsible or accountable for the problem described in the complaint. *Feinstein v. Philadelphia Suburban Water Company*, 50 Pa. P.U.C. 300 (1976).

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

In addition to determining whether the Complainant has satisfied his burden of proof, care must be exercised to insure that the Commission's decision is supported by substantial evidence. 2 Pa.C.S. § 704. The term "substantial evidence" has been defined by

various Pennsylvania courts as such relevant evidence that a reasonable mind might accept as adequate to support a conclusion. Substantial evidence is more than a mere trace of evidence or a suspicion of the existence of a fact sought to be established. *Norfolk & Western Ry. Co. v. Pa. P.U.C.*, 489 Pa.109, 413 A. 2d 1037 (1980); *Murphy v. Dept. of Public Welfare*, 85 Pa. Cmwlth. 23, 480 A.2d 382 (1984).

The Complainant testified that he should not be charged for utility service provided in February and March 2011 because he signed the lease for the service address on April 2, 2011 (Tr. 7, 8). Therefore, he should only be charged for the usage after he moved in on April 2, 2011 (Tr. 10, 17). The Complainant said that his niece, Fatmata Sheriff, went to the Respondent's office to apply for service and she erroneously told them that the lease started on February 1, 2011 (Tr. 14). He said that although the lease was prepared in February 2011, it was not actually signed until April 2011 (Tr. 7, 8, 13). The Complainant testified that he went to the Respondent's office to contest the commencement date (Tr. 19).

The Complainant testified that he has only paid \$800.00 to the Respondent because the business is not profitable (Tr. 20).

Renee Tarpley, a regulatory assessor for the Respondent, testified that the Respondent received the commercial service application on May 6, 2011 after posting a notice of failure to apply for service at the service address (Tr. 24; PECO Ex. 2). She said that the Complainant and Ms. Sheriff came to the Respondent's office to apply. They provided a lease that indicated that Fatmata Sheriff and Mohamad Mansaray were the lessees and that the lease commenced on February 1, 2011 (Tr. 26; PECO Ex. 3). In addition, on the commercial service application they listed February 1, 2011, as the date responsible and the date the lease started. When the Complainant denied coming to the office in May 2011 to apply for service, Ms. Tarpley said that he was present because he supplied identification at the time of the visit (Tr. 29).

Ms. Tarpley testified that the bills that the Complainant is contesting are: for service from February 1 to February 13, 2011 in the amount of \$98.90; for service from February

13 to March 14 in the amount of \$305.97; and for service from March 14 to April 12 in the amount of \$289.72 (Tr. 23; PECO Ex. 1).

The Complainant made one payment of \$800.00 on February 6, 2011 (Tr. 24; PECO Ex. 1). The Complainant's balance at the time of the hearing was \$2,179.49 (Tr. 23; PECO Ex. 1).

In the June 28, 2011 Bureau of Consumer Services decision, the Commission agreed that the Respondent could begin billing the Complainant from February 1, 2011, the date on the lease that he provided (Tr. 28; PECO Ex. 3).

The documentary evidence in the record concerning the date that the Complainant should be responsible for electric service consists of the commercial application which was submitted by the Complainant and/or his niece and the lease for the service address. The Complainant was responsible for both documents. The Complainant denied that the lease was signed in February. He points to page 5 of the lease where the date is crossed out and "4/2/11" was added (PECO Ex. 3 at 5). However, there are numerous places on the lease that indicate that the lease started on February 1, 2011, and that it was signed on that date. Furthermore, the February 1, 2011 date was placed on the commercial application for service (PECO Ex. 2). He contended that his niece made a mistake when she put the February 1, 2011 date on the application (Tr. 17, 19). Nevertheless, he said that she completed the service application with his authorization (Tr. 17).

Based on the evidence in the record, the Complainant and Ms. Sheriff are responsible for paying the bill for service at the service address beginning on February 1, 2011. This is supported by the commercial service application and the lease for the service address.

The Complainant has failed to sustain his burden of proof. Based on the evidence in the record, the bills were correct as rendered. The Complainant should pay the outstanding balance within 60 days of a final Commission Order in this matter.

Accordingly, the complaint is dismissed.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the parties and subject matter in this proceeding. 66 Pa.C.S. § 701.
2. That the Complainant has the burden of proof in this matter pursuant to 66 Pa.C.S. § 332(a).
3. That the Complainant failed to sustain his burden of proof.

ORDER

THEREFORE,

IT IS ORDERED:

1. That the complaint filed by Mohamad Mansaray against PECO Energy Company at Docket C-2011-2258219 is dismissed.
2. That the Complainant shall pay the outstanding balance on the account at the service address within sixty (60) days of a Commission Order in this matter.
3. That the record in this case is marked closed.

Date: July 27, 2012



Cynthia Williams Fordham
Administrative Law Judge



EXHIBIT “2”

4419 Frankford Ave
Philadelphia, PA 19124

Secretary of Commissioner
400 North Street, 2nd Fl
Keystone Bldg
Harrisburg, PA 17105-3265

RECEIVED

AUG 23 2012

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

August 22, 2012

To Whom It May Concern:

I am humbly appealing the judge's decision on the following grounds.

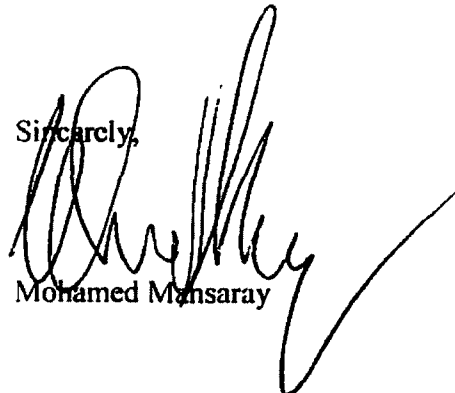
To begin, the Judge had agreed with PECO, stating that I applied for the electric although I categorically denied it.

Today, there are cameras in almost every office and business; therefore I am challenging PECO to produce the evidence by camera to show both myself and the Ms Sheriff entering into the building as stated by Ms. Tarpley, on Page 5 of the discovery. This evidence should show 2 things 1st my presence and 2) displaying my identification and @ PECO; again I am denying my presence.

Secondly, the lease that was presented to the courts by PECO's attorney was also an issue, the lease was prepared in February however the agreement went into affect on April 2, 2011, because I signed the agreement it was all the more reason why I crossed the the preparation date of February 1, 2011 and replaced my the April's date, as well established that it was a mistake on any legal paper, signatory has all the right to cross out the wrong information and present the correct one on page 2. I'm here protesting that I should not be ordered to pay the amount I've been charged with all do respect to you.

-xcprply.pdf

Sincerely,



Mohamed Mansaray

or office at usps.com/pickup

U.S. POSTAGE
PAID
PHILADELPHIA, PA
19124
AUG 23 2012
AMOUNT

\$6.05
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PLEASE PRESS FIRMLY

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From/Expéditeur:

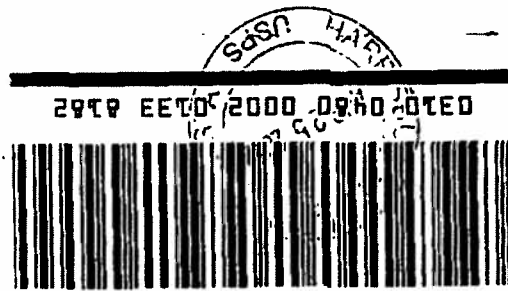
Mohamed Mansaray
4419 Frankford AVE
Phila PA 19124

To/Destinataire:

Secretary of The Commission
2nd Floor, Keyston Building
400 North Street,
Harrisburg PA 17105-3265

Country of Destination/Pays de destination:

AUG 25 2012



0310 0002/0910 0120

AUG 25 2012

O'Neill, Leslie:(BSC)

From: Foisy, Bernadette:(PECO)
Sent: Thursday, August 30, 2012 10:58 AM
To: Lee, Shawane:(BSC); Tarpley, Renee A.:(PECO)
Cc: O'Neill, Leslie:(BSC)
Subject: Initial-Decision FATAMA B SHERIFF & MOHAMED C2258219 2011-08-19 4476920013 TARPLEY, RENEE A

Follow Up Flag: Follow up

Due By: Thursday, August 30, 2012 12:00 AM

Flag Status: Red

Attachments: C2268126 exceptions.pdf

Here is yet another one – dated 8/23 which would give us enough time reply to exceptions – please review and update status - THANKS

The one below is dated as received at PUC 7/11/2012 so I am not sure if we are able to reply. I thought we had to be served by complainant? Let try to reply to exceptions either way.

THANKS

From: Lee, Shawane:(BSC)
Sent: Thursday, August 30, 2012 10:49 AM
To: Foisy, Bernadette:(PECO)
Cc: Tarpley, Renee A.:(PECO); O'Neill, Leslie:(BSC)
Subject: RE: Initial-Decision THE VICTORY CONDO C2268126 2011-10-27 3445561001 TARPLEY, RENEE A

We never received the exceptions. Normally, the commission sends us a copy and tells us the response date if they see we were not served with a copy by the Complainant. I expect the Commission will forward a copy of the exceptions to our attention with a response date.

From: Foisy, Bernadette:(PECO)
Sent: Thursday, August 30, 2012 10:47 AM
To: Lee, Shawane:(BSC)
Cc: Tarpley, Renee A.:(PECO); O'Neill, Leslie:(BSC)
Subject: RE: Initial-Decision THE VICTORY CONDO C2268126 2011-10-27 3445561001 TARPLEY, RENEE A

I think it may be too late – did we ever receive them or is the expectation we look for them? I did not see them on the formal attachment server but found them on the PUC website.

From: Foisy, Bernadette:(PECO)
Sent: Thursday, August 30, 2012 10:24 AM
To: Tarpley, Renee A.:(PECO)
Subject: RE: Initial-Decision THE VICTORY CONDO C2268126 2011-10-27 3445561001 TARPLEY, RENEE A

It may be too late. Let's check with Leslie and see if she received the document and if she is aware to change status and send to us?

8/30/2012

From: Tarpley, Renee A.:(PECO)
Sent: Thursday, August 30, 2012 10:20 AM
To: Foisy, Bernadette:(PECO)
Subject: RE: Initial-Decision THE VICTORY CONDO C2268126 2011-10-27 3445561001 TARPLEY, RENEE A

I was not aware the cust had filed Exceptions; will tie-in with Shawane.

*Renee Tarpley, MSM
SR Regulatory Assessor
PECO, an EXELON CO
(215) 841-5915
Fax: (215) 841-6208*

From: Foisy, Bernadette:(PECO)
Sent: Thursday, August 30, 2012 10:14 AM
To: Tarpley, Renee A.:(PECO)
Subject: Initial-Decision THE VICTORY CONDO C2268126 2011-10-27 3445561001 TARPLEY, RENEE A

Did we reply to these exceptions? If not we probably should.
Should the status be changed to customer appeal?