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August 31, 2012

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

**RE: Delaine Andrews v. PECO Energy Company**  
**Docket No. C-2012-2283978**

Dear Secretary Chiavetta:

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

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

Best Regards,

STEVENS & LEE

Michael A. Gruin

Encl.

cc: Delaine Andrews, w/encl. (via U.S. Mail)  
Honorable Kandace Melillo, Administrative Law Judge

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**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

DELAINÉ ANDREWS	:	
	:	
Complainant	:	
	:	
v.	:	Docket No. C-2012-2283978
	:	
PECO ENERGY COMPANY	:	
	:	
Respondent	:	

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**PECO ENERGY COMPANY'S  
MAIN BRIEF**

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And Now, pursuant to 52 Pa. Code § 5.501 and the Briefing Order issued in this proceeding, comes PECO Energy Company (“PECO”) by and through its attorneys Stevens & Lee, and files its Main Brief.

**I. INTRODUCTION AND STATEMENT OF THE CASE**

This matter involves a Formal Complaint filed by Delaine Andrews (“Complainant” or “Ms. Andrews”) against PECO. Ms. Andrews alleges that PECO improperly established electric service in her name for an apartment that she owns at 4839 Haverford Avenue, 2<sup>nd</sup> Floor, and she disputes her responsibility for the charges that accrued for service to the apartment for the period from November 9, 2009 to June 17, 2011. Ms. Andrews acknowledges that she owns the apartment building in question, but she asserts that an unknown individual called PECO to initiate service in Ms.

Andrews' name without her permission. Therefore, she asserts that she is not responsible for the unpaid balance on the account, which PECO calculates is \$589.17.

While Ms. Andrews insists that she did not request service in her name for the Haverford Avenue apartment, the voice recording of the service initiation call clearly and unequivocally establishes that Ms. Andrews did, in fact, call PECO to initiate service in her name. As such, it was proper for PECO to place service for the Haverford Avenue apartment in Ms. Andrews' name, and she is responsible for the electricity charges that accumulated during the time period that the service was in her name. There is no legitimate basis to relieve Ms. Andrews of the responsibility to pay the balance that accumulated at the Haverford Avenue property during the seventeen months when the service was in her name.

## **II. BACKGROUND AND PROCEDURAL HISTORY**

This matter was initiated by the filing of a Formal Complaint by Ms. Andrews in January 2012. The Complaint alleged that "PECO has charged me for electric at a property that I own but did not apply for electric service at 4839 Haverford Ave." For relief, the Complaint indicated that "I would like the add-on PECO delinquencies from 4839 Haverford Ave to be removed from my 52<sup>nd</sup> Street account and my 7828 Chelwynde Ave. account. I would like to dispute the 4839 Haverford Ave. account."

PECO filed its Answer to the Complaint on February 8, 2012. PECO denied the material allegations of the Complaint, stating that it had reviewed a telephone call from the Complainant on November 17, 2009 which requested service in her name, and

determined that the Complainant was responsible for the unpaid balance on the account for the Haverford Ave. apartment.

An initial telephonic hearing was held in this matter on April 9, 2012. After presenting her direct case, the Complainant requested a continuance of the hearing because she indicated that she had not received a copy of PECO's proposed Exhibit 4. The Complainant's Motion was granted on the record, and was confirmed by an Order issued the same day.

A further evidentiary hearing was held on July 17, 2012. At the further hearing, the Complainant completed the presentation of her direct case, and PECO presented the testimony of one witness and admitted four Exhibits into the record. Two late-filed Exhibits of the Complainant were entered in the record by Order dated August 15, 2012. The Briefing Order in this matter was also issued on August 15, 2012.

### **III. PROPOSED FINDINGS OF FACT**

1. Ms. Andrews owns the property at 4839 Haverford Ave., Philadelphia, PA, but she does not reside there (Tr. p. 9).
2. During periods relevant to this complaint, Ms. Andrews resided at 7828 Chelwynde Ave., Philadelphia, PA. (Tr. p. 8)
3. Ms. Andrews leases the 1<sup>st</sup> and 2<sup>nd</sup> floor apartments at the 4839 Haverford Ave. property to tenants. (Tr. 10, 16).
4. Between November 19<sup>th</sup> 2009 and June 17, 2011, Ms. Andrews leased the first floor apartment to Cynthia Jones, and the second floor apartment to Robert Clark. (Tr. 17).

5. Ms. Andrews also owns a rental property at 146 North 52<sup>nd</sup> Street, Philadelphia, PA. (Tr. 10).
6. On November 17, 2009 Ms. Andrews called PECO to initiate electric service in her name at 4839 Haverford Ave., 2<sup>nd</sup> Floor effective November 19, 2009. The service initiation call was recorded by PECO. (Tr. p. 70, PECO Exhibit 3).
7. The voice on the recorded service initiation call was the voice of Ms. Andrews, and she clearly requested service in her own name.
8. The voice on the call was a female voice, so it could not have been Robert Clark. (Tr. pp. 72-29 and PECO Ex. 3).
9. The caller on the service initiation call correctly recited Ms. Andrews' home address, her P.O. Box address in Harrisburg, her current residential account number, the last four digits of her social security number and other identifying information. (Tr. pp. 72-29 and PECO Ex. 3).
10. The caller on the service initiation call knew specific meter information not only about the 2<sup>nd</sup> floor apartment at 4839 Haverford Avenue, but about the entire building, including the house meter. (Tr. pp. 72-29 and PECO Ex. 3).
11. During the period that the account for 4839 Haverford Avenue, 2<sup>nd</sup> Floor, was in the name of Ms. Andrews, PECO did not receive any payments on the account. (PECO Exhibit 4).
12. PECO initially mailed monthly bills for the 4839 Haverford Ave., 2<sup>nd</sup> Floor account to the address specified on the service initiation call (P.O.

Box 3211, Harrisburg, PA 17102, but after those bills were returned by the United States Postal Service, PECO mailed the monthly bills to Ms. Andrew's address at 1326 North Sixth Street, Harrisburg, PA. (Tr. pp. 80-81). Ms. Andrews' confirmed that this is her correct mailing address. (Tr. p. 62).

13. Service to 4839 Haverford Avenue, 2nd Floor, was taken out of Ms. Andrews' name effective June 17, 2011, as a result of another customer calling to initiate service at that location. (Tr. p. 69).
14. At the time that service to 4839 Haverford Avenue, 2nd Floor, was taken out of Ms. Andrews' name, the unpaid balance on the account was \$589.17. (Tr. p. 69 and PECO Exhibit 4).
15. The unpaid balance was transferred to another one of Ms. Andrews' active accounts – the property at 146 North 52<sup>nd</sup> Street, First RR, Philadelphia, PA. (Tr. pp. 69-70.)
16. On November 21, 2001, the final unpaid balance of \$620.80 from Ms. Andrews' account at 146 North 52<sup>nd</sup> Street, First RR (which included the previously transferred unpaid balance from 4839 Haverford) was transferred to her active account for 7828 Chelwynde Ave., Philadelphia, PA. (Tr. pp. 34-35).
17. As of the date of the hearing, the unpaid balance on the Complainant's account for 7828 Chelwynde Ave. was \$580.28. (Tr. p. 67 and updated PECO Exhibit 1.)

### III. PROPOSED CONCLUSIONS OF LAW

1. As the party seeking the intervention from this Commission, Complainant bears the burden of proving that Respondent violated provisions of the Public Utility Code or the Public Utility Commission's regulations in some fashion.<sup>1</sup>
2. To establish a sufficient case and satisfy the burden of proof, Complainant must show that PECO is responsible or accountable for the problem described in the Complaint.<sup>2</sup> Such a showing must be by a preponderance of the evidence<sup>3</sup>. Complainant can meet that burden if she presents evidence more convincing, by even the smallest amount, than that evidence presented by Respondent.<sup>4</sup>
3. Additionally, any finding of fact necessary to support the Commission's adjudication must be based upon substantial evidence.<sup>5</sup> More is required than a mere trace of evidence or a suspicion of the existence of a fact sought to be established.<sup>6</sup>
4. A public utility is entitled to full payment for services provided to customers and all customers are obligated to pay for utility service provided to them.<sup>7</sup>

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<sup>1</sup> Section 332(a) of the Public Utility Code, 66 Pa. C.S. §332(a).

<sup>2</sup> Patterson v. Bell Telephone Company of Pennsylvania, 72 PA PUC 196 (1990), Feinstein v. Philadelphia Suburban Water Company, 50 PA PUC 300 (1976).

<sup>3</sup> Samuel J. Lansberry, Inc. v. Pa. Public Utility Comm'n, 134 Pa. Commw. 218; 221-222, 578 A.2d 600; 602 (1990), *alloc. den.* in 602 A.2d 863 (1992).

<sup>4</sup> Se-Ling Hosiery v. Margulies, 364 Pa. 45, 70 A.2d 854 (1950).

<sup>5</sup> Mill v. Comm'w., PA Public Utility Comm'n, 447 A.2d 1100 (Pa. Cmwlth.1982); Edan Transportation Corp. v. PA Public Utility Comm'n, 623 A.2d 6 (Pa. Cmwlth.1993), 2 Pa.C.S. §704

<sup>6</sup> 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, 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).

<sup>7</sup> Scaccia v. West Penn Power Co., 55 Pa. PUC 637 (1982); Mill v. Pa. Public Utility Commission, 447 A.2d 1100 (1982); Bolt v. Duquesne Light Co., Docket No. Z-8712758 (Order entered April 8, 1988).

5. Pursuant to Rule 4.1 of PECO's Commission-approved tariff (Tariff Electric Pa.PUC No. 3), customers may apply for service over the telephone.
6. The Complainant has failed to carry her burden of providing sufficient evidence to support a finding that she was not responsible for the charges on her account, or that PECO violated the Public Utility Code or the Commission's regulations, and therefore, the Complaint must be dismissed.

#### **IV. ARGUMENT**

In this case, Ms. Andrews claims that an unknown individual impersonated her when calling PECO to initiate electric service, and that therefore she should not be responsible for the \$589.17 in charges that accrued on the account while it was in her name. This claim by Ms. Andrews lacks all credibility, and must fail based on the recorded service initiation call on which Ms. Andrews' voice can clearly and obviously be heard.

This case begins and ends with the service initiation call (PECO Exhibit 3), which proves that Ms. Andrews did call PECO to initiate service in her name, and therefore is fully responsible for the outstanding balance that accrued on the account while it was in her name. It does not take any special expertise to determine that the voice on the recorded service initiation call that was played at the hearing clearly was the voice of the person testifying at the hearing, i.e., Ms. Andrews. The voice on the call certainly was not a male voice, so it could not have been the second floor tenant Robert Clark, who would be the only person who would benefit from having the account in Ms. Andrews' name. The caller clearly requested service to be initiated in Ms. Andrews' name.

Without hesitation, the caller was able to quickly recite Ms. Andrews' current mailing address, current physical address, current account number, social security number and other identifying information. The caller knew specific meter information not only about the 2nd floor apartment where service was being initiated, but the entire building including the house meter, which only could have been known by the owner of the building, i.e., Ms. Andrews. In fact, the caller knew enough about the building to correct the PECO customer service representative, who initially only thought that two meters existed at the property. (See Tr., p. 74). PECO's witness Mr. Conway testified that he had spoken to Ms. Andrews on the telephone, and that the voice on the service initiation call was the voice of Ms. Andrews. (Tr. p. 81). In short, there can be no legitimate doubt that it was Ms. Andrews who called to initiate service in her own name.

Ms. Andrews provided little evidence to support her allegation of identity theft. The lease between Ms. Andrews and her tenant (Complainant's Exhibit 2) is not probative on the issue of who called to initiate service. The lease merely delineates the financial responsibility for utility service as between the landlord (Ms. Andrews) and the tenant (Robert Clark). The lease has no bearing on who actually did initiate electric service at the address. If anything, the lease highlights the point that the dispute over responsibility for the unpaid usage at 4839 Haverford Avenue is a landlord-tenant issue that does not belong before the Commission.

The lease indicates that utility service (other than water) should be placed in the name of the tenant (Robert Clark). This did not occur, because it is obvious that Ms. Andrews called PECO to initiate service in her own name, as demonstrated by the service initiation phone call. But the lease terms regarding the division of utility payment

responsibilities between landlord and tenant have no bearing on which party actually contacted PECO to initiate electricity service. To put the probative value of the lease in perspective: PECO could not retroactively place service in the name of Mr. Clark based solely on this lease document, and likewise, the Complainant should not be able to negate her service initiation call by simply providing a copy of a lease which points to her tenant as being responsible for electric service.

Ms. Andrews' claim is also undermined by the evidence that she did not provide. Despite having two opportunities to provide a police report or other documents as evidence of identity theft, Ms. Andrews failed to provide any such information. Ms. Andrews indicated at the first hearing that she filed a police report and that a report of identity theft appeared on her credit record<sup>8</sup>, but she did not provide any documentation to support her statements either at the first hearing, the second hearing, or with her late-filed Exhibits. This failure to provide any evidence to support her claim of identity theft allows for a negative inference that no identity theft occurred.<sup>9</sup>

In conclusion, Ms. Andrews has failed to meet her burden of proving that she is not responsible for the electric service at 4839 Haverford Ave., 2<sup>nd</sup> Floor, during the period in question. The evidence in this case, and the service initiation call recording in particular, overwhelmingly confirms that Ms. Andrews did in fact call PECO to initiate service in her name. Ms. Andrews has provided no credible evidence that would allow for any other conclusion. For these reasons, Ms. Andrews' should be held responsible

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<sup>8</sup> Tr., pp. 13-14

<sup>9</sup> A negative inference may be drawn when a party fails to produce evidence within its peculiar control and possession. See Tremaine v. H.K. Mulford Co., 317 Pa. 97; Wilson v. Pennsylvania Railroad Company, 421 Pa. 419, 210 A.2d 666 (1966); and Glover v. Com., Norristown State Hospital, 90 Pa. Commw. 58, 494 A.2d 39 (1985).

for the entire balance that accrued on the account during the period that the account was in her name, and her Complaint should be dismissed, with prejudice.

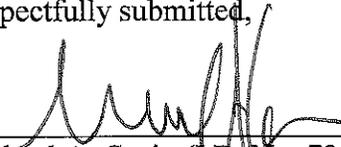
## VI. PROPOSED ORDERING PARAGRAPHS

Wherefore, it is hereby ORDERED, that:

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 burden of proof in this proceeding is on the Complainant.
3. The Complainant has not met her burden of proving that she is entitled to relief. 66 Pa. C.S. §§332(a)
4. That the complaint of Delaine Andrews against PECO Energy Company at Docket No. C-2012-2283978 is denied, with prejudice.
5. That the record at Docket No. C-2012-2283978 is marked closed.

WHEREFORE, for all of the reasons stated above, PECO Energy Company respectfully requests that this Complaint be dismissed with prejudice.

Respectfully submitted,



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Counsel for  
PECO Energy Company

Dated: August 31, 2012

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

DELAINÉ ANDREWS

Complainant

v.

PECO ENERGY COMPANY

Respondent

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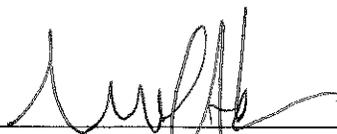
Docket No. C-2012-2283978

CERTIFICATE OF SERVICE

I hereby certify that on this 31st day of August 2012, a copy of the foregoing Brief has been served upon the persons listed below via First Class Mail in accordance with the requirements of 52 Pa. Code Sections 1.54 and 1.55.

Delaine Andrews  
P.O. Box 3211  
Harrisburg, PA 17105

DATE: August 31, 2012

  
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Michael A. Grun