

September 4, 2012

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

Commonwealth of Pennsylvania
Public Utility Commission
Office of Special Assistants
3rd Floor, Keystone Building
400 North Street
Harrisburg, PA 17120

Michael A Gruin Esquire
Stevens & Lee
16th Floor
17 North Second Street
Harrisburg, PA 17101

Re: Docket No. C-2011-2246492

To all parties,

I would like to thank you for the opportunity and the extension you have granted me to file the exceptions. I have attached supporting materials for the case and ask they be submitted at this time. A CD of the documentation has been enclosed for the Office of Special Assistants. Please feel free to contact me directly 215-416-0946 if you have any questions comments or concerns.

Thank you,


Michael Ingram

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

Page 4

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EXCEPTIONS

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

LINES 12-16

"Susan Afshari v. PPI Electric Utilities Corporation and Kim and Mike Fantazier"

Initial Decision before Ember S. Jandebaur ALJ

Issues;

Charges to Complainant prior to Foreign Load should not be but charges from the time of detection to the time that the correction is verified by the utility company.

How did the utility company allow much a high bill by the tenant. Utility company did not provide "

neither reasonable nor efficient service to their customers(tenant and property owner)."

Late fees, reconnect fees, connection charges, other charges and transfer fees should not be charged to the property owner.

Utility company penalty for allowing a bill in this amount.

[Handwritten signature]
OR. S. Jandebaur

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A handwritten signature in black ink, appearing to be "Ember S. Jandebaur".

#2

12. On June 4, 2011, the Complainant filed a complaint ("2011 complaint") with the Commission contesting the transfer of the second floor tenant's existing arrearage into his account after the foreign load was found at the service address in June 2010. He asked for the arrearage to be removed from his account.

13. On July 5, 2011, the Respondent filed an Answer and New Matter. In the Answer and New Matter the Respondent raised the defense of *res judicata*. Motion Exhibit 2

14. On July 22, 2011, the Complainant filed a response to the Respondent's New Matter. Motion Exhibit 3.

15. The Respondent filed a Motion for Judgment on the Pleadings regarding the 2011 complaint on the grounds that the complaint failed to state a claim upon which relief could be granted and that it is barred by the doctrine of *res judicata*.

16. The Complainant did not respond to the Respondent's Motion for Judgment on the Pleadings.

DISCUSSION

The Respondent has filed a Motion for Judgment on the Pleadings, pursuant to 52 Pa. Code § 5.102. The Respondent is requesting that the complaint be dismissed on the grounds that the complaint failed to state a claim upon which relief can be granted and based on the doctrine of *res judicata*.

The Commission's Rules of Administrative Practice and Procedure permit the filing of Motions for Judgment on the Pleadings. Since it is an affirmative defense, the question of whether the Commission is legally empowered to grant the requested relief is properly raised as such in New Matter. 52 Pa. Code § 5.62(b). Subsequently, the Respondent filed a Motion for Judgment on the Pleadings pursuant to 52 Pa. Code § 5.102. That Commission regulation provides as follows:



PECO

1-888-480-1533

YOUR GAS/ELECTRICITY HAS BEEN SHUT-OFF

(AVISO DE SUSPENSION DE SERVICIO)
For PECO Charges Only

Name: HELISHA S LOVETT
Addr : 6244 N BROAD ST 2ND FL
PHILADELPHIA, PA 19141

Date: 06/06/2011

Account: 22591-53094

WE SHUT OFF YOUR GAS/ELECTRIC SERVICE BECAUSE:

You did not pay your past due bill.

Other: _____

TO HAVE YOUR SERVICE RESTORED, CALL OUR OFFICE AT 1-888-480-1533.

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.

You must pay the following before we can restore your service:

- Past Due Amount of \$ 2,419.67 ; and
- Deposit Amount of \$.00
- Agreement Unbilled Balance \$.00
- **Total \$ 2,419.67
- Reconnection Charge(s) Noted: Electric-\$75 / Gas-\$80 / Water-\$25 / Tap Cut-\$260
Major Work-\$1,650 / Other-\$ _____

You may be required to pay any additional bills that have become past due to restore your service.

**Since your service has been terminated, you may have to make substantial payments in order to have your ser 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.

WE MAY BE ABLE TO QUICKLY RESTORE YOUR UTILITY SERVICE IF:

- o Someone in your home is SERIOUSLY ILL. Read the MEDICAL EMERGENCY NOTICE below.
- o Your income is at or below 250% of the Federal Poverty Level. See the chart on the back of this notice and call us at 1-888-480-1533.

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 yo payment terms while protected under the medical certification.

117



0112

015-360-7774

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

Account Number: 2259153076
For Service To: 6244 N BROAD ST
Date Prepared: April 7, 2010

Past Due Amt: \$3,636.36
New Billing: \$102.93
Total Amount: \$3,739.29

3624919

Your Gas/Electric Service May Be Shut Off!

Because your bill is past due, we will shut off the service to 6244 N BROAD ST on or after 8:00 a.m. on April 21, 2010.

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

- Pay \$3,636.36 in full before April 21, 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	<u>\$3,636.36</u>
• Deposit Past Due Amount of	<u>\$0.00</u>
• Agreement Unbilled Balance	<u>\$0.00</u>
• Total	<u>\$3,636.36*</u>

*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.

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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

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

#9

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Page 5&6

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

EXCEPTION

THE COMPLAINT FAILED TO STATE A CLAIM UPON WHICH RELIEF CAN BE GRANTED

No charges from another location shall be the responsibility of the property owner.

Issues:

PECO bill dated 07/12/2011 clearly indicated multiple charges especially Transfer service fee and charges from previous bill.

Burden of proof is on the PECO to show the history and when this account had a zero balance which will be from inception at 6244 N. Broad st to time account was transferred back to the tenant name.

Michael J. [Signature]
Michael J. [Signature]

OK 8/22/12

#2

Page 5&6

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A handwritten signature in black ink, appearing to be 'af hpl'.

#2

§ 5.102. Motions for summary judgment and judgment on the pleadings.

(a) *Generally.* After the pleadings are closed; but within a time so that the hearing is not delayed, a party may move for judgment on the pleadings or summary judgment. A motion must contain a notice which states that an answer or other responsive pleading shall be filed within 20 days of service of the motion.

(b) *Answers.* An answer to a motion for judgment on the pleadings or summary judgment, including an opposing affidavit or verification to a motion for summary judgment, may be filed within 20 days of the date of service of the motion. The answer to a motion for summary judgment may be supplemented by depositions, answers to interrogatories or further affidavits and admissions.

...

(d) *Decisions on motions.*

(1) *Standard for grant or denial on all counts.* The presiding officer will grant or deny a motion for judgment on the pleadings or a motion for summary judgment, as appropriate. The judgment sought will be rendered if the applicable pleadings, depositions, answers to interrogatories and admissions, together with affidavits, if any, show that there is no genuine issue as to a material fact and that the moving party is entitled to a judgment as a matter of law.

In the New Matter, the Respondent averred that it transferred the second floor electric account, including the existing arrearage on the account, to the Complainant's account in accordance with Section 1529.1 of the Public Utility Code, 66 Pa.C.S. § 1529.1 and the Commission's decision in *Ace Check Cashing*. The Commission adopted the Initial Decision dismissing the complaint because the complaint failed to state a claim upon which relief could be granted. The Respondent further averred that the Complainant filed an identical complaint at Docket No. C-2011-2246492 requesting that the Commission find that he was not responsible for the tenant's bill.



The complaint failed to state a claim upon which relief can be granted

In the 2010 and 2011 complaints the Complainant alleged that he is a landlord who owns a duplex apartment building at 6244 N. Broad Street in Philadelphia. The two apartments have separate meters. However, when the second floor tenant's electric service was terminated for nonpayment, foreign wiring was found. Therefore, the Respondent transferred the second floor electric account, including all arrearages, to the name of the Complainant/Landlord in accordance with Section 1529.1 of the Public Utility Code and the commission's decisions in *Ace Check Cashing Inc. v. Philadelphia Gas Works*, Docket No. C-2008-2056428 (Order entered May 21, 2010) ("Ace Check Cashing") and *Corazzini v. UGI Penn Natural Gas, Inc.*, Docket No. F-2009-21010182 (Order entered July 16, 2010).

In ruling on the preliminary objections filed in response to the 2010 complaint, ALJ Weismandel stated:

In *Santos* the Commission clearly held that "[t]he utility must . . . place the account in the landlord's name upon discovery of the foreign load and collect unpaid bills only from the landlord." (emphasis added) *Santos* at 14. The Commission also said, "[c]learly, the utility must pursue collection of any unpaid amounts from the landlord and not from the tenant." (emphasis added) *Santos* at 16. See, also, *Allen L. Jones v. Pennsylvania Power & Light Company*, Docket Number C-00971013, Opinion and Order adopted February 11, 1999, entered February 25, 1999. Consequently, complainant is responsible for the tenant's account balance, including arrearages incurred at these premises but not at any other location, as of the date of discovery of the foreign load plus usage until such time as the foreign load was removed and the removal verified by the utility.

As to complainant's position that the statute should not apply because the cost of electric service for the foreign load was *de minimus*, this position must be rejected. As a matter of law, there is no *de minimus* exception to 66 Pa.C.S. § 1529.1. *Joseph L. Ward v. PPL Utilities, Inc., Complaint Appellant*, Docket Number C-00992784, Opinion and Order adopted August 31, 2000, entered September 1, 2000. See, also, *Randall Tasker v. PP&L, Inc., Complaint Appellant*, Docket Number C-00003249, Final Order entered August 29, 2000, *Edmund V. Corazzini v. UGI Penn*

Name: HELISHA S LOVETT
Account Number: 22591-53094
Phone Number: 267-582-0879
Service Address: 6244 N BROAD ST, 2ND FL,
PHILADELPHIA

Billing Summary

Bill Date	06/20/2011
Connection charge - standard	\$6.00
Budget bill charges from previous bill	\$52.00
Budget bill charges from previous bill	\$52.00
Budget bill charges from previous bill	\$52.00
Reconnect charge	\$75.00
Reconnect charge	\$75.00
Charges from previous bill	\$663.34
Transfer service	\$919.05
Transfer service 6244 N BROAD ST PHILADELPHIA	\$201.87
Late payment charge	\$426.51
Total Other Charges	\$2,522.77

Current Period Charges

Electric	\$79.41
Total New Charges	\$79.41
Total amount due on 07/12/2011	\$2,602.18

General Information

Next scheduled meter reading: July 20, 2011
PECO, 2301 Market St, Philadelphia, PA 19103-1380. If you have any questions or concerns, please call 1-800-494-4000 before the due date.

Customer Self Service - Manage Your Account 24/7

- www.peco.com/ebill - Go paperless: receive and pay your bill
- www.peco.com/service - Start, stop and transfer your service
- www.peco.com/SmartIdeas - Save energy and money
- Pay by phone with credit/debit card at 1-877-432-9384 (\$3.50 fee)

Message Center

You are on the Customer Assistance Program (CAP) Rate. You are saving money by paying a CAP rate.

New charges contain estimated total state taxes of \$5.74, including \$4.81 for State Gross Receipts Tax.

When paying in person, please bring the entire bill.

(continued on next page)



#2

Page 7

EXCEPTION

" The second formal complaint filed against PECO"

Issues:

I have given all papers and explanation to prove that I was not served due to the failure of the U.S. Post Office proper handling the delivery of Certified Mail. I have rendered proper postal documentation to affirm my position. I have exhausted the written route and ask that I be given a chance for a hearing.

I consulted with my state representative Larry Curry office who in turn put me in contact with Secretary of the Commission Rosemary Chiavetta. She indicated that she would look into the matter. I followed up within the allotted period of time. I called to follow up with Secretary Chiavetta but she was out of the country. I left a message with Sarah Miller to return my call in the Secretary absence but to no avail. I was able to contact Christine Williams who said she would pull the file for scheduling and for me to expect paperwork regarding a hearing date. I receive paperwork dated October 14, 2011 which indicated a hearing set for Tuesday, December 13, 2011.

Subsequently, I received paperwork indicating that the hearing date is cancelled and my hopes of a hearing was gone. Without me pleading my case I can't be heard.

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PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

Michael Inman
original
Admiral

#3

Page 7

EXCEPTION

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Michael Ingram
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original

3

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*referred by
Michael Ingram*

if I can be

3

Natural Gas, Inc., Docket Number F-2009-2101282, Opinion and Order adopted July 15, 2010, entered July 16, 2010.

ID at 5.

The Commission adopted this Initial Decision in its Order entered May 6, 2011. Since the 2011 complaint contains the same allegations, it is clear that the result should be the same. The Respondent acted properly and the Complainant is not entitled to relief.

Res Judicata

PECO requested that the Commission dismiss the complaint on the grounds that the complaint is barred by the doctrine of *res judicata*. The Complainant previously filed a nearly identical complaint contesting PECO's transfer of a tenant's account balance to the Complainant's name due to a foreign wiring situation. The Commission dismissed the 2010 complaint, holding that the Respondent correctly followed the well-established procedure for handling foreign wiring situations. The Respondent explained that the complaint at Docket No. C-2011-2246492, the 2011 complaint, restates the claims that were dismissed in the first complaint docketed at F-2010-2212426, the 2010 complaint. Motion at 1.

The Respondent is correct that this is the second formal complaint that the Complainant filed against PECO concerning the transfer of a tenant's account balance to him after foreign wiring was discovered at his rental property at 6244 N. Broad Street, Philadelphia, PA. Motion at 1, 2 (¶ 1).

When a final decision has been rendered in a proceeding, it is binding under the doctrine of claim preclusion, on any case brought subsequent to that time which involves the same parties and issues as raised previously. *Anthony Cannon v. Verizon Pennsylvania, Inc.*, C-20043729 (Order entered June 29, 2005), *Pa. PUC Schuylkill Township v. Borough of Phoenixville*, R-00932770 (Order entered October 1, 1993).

[Handwritten signature]

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PECO Energy Company
2301 Market Street, S15-1
P.O. Box 8699
Philadelphia, PA 19101-8699

www.exeloncorp.com

December 5, 2011

Michael Ingram
550 Waverly Rd
Glenside, PA 19038
Account #08285-00205

RE: 6244 N Broad Street- 2nd fl
Philadelphia, PA 19141

Dear Mr. Ingram:

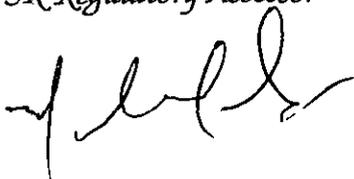
We have received your Formal complaint filed with the Public Utility Commission at Docket #C-2011-2246492. The In Person hearing initially scheduled for Tuesday, December 13, 2011 at 10:00 a.m. has been cancelled pending a ruling on PECO's motion for Judgment.

- On 4/21/10, the electric service at 6244 N Broad St- 2nd fl was terminated for delinquency.
- It was discovered that the 1st fl tenant was affected by the termination; therefore service was restored and an investigation initiated.
- The 2nd fl tenant, Helisha Scott was the responsible party since 4/29/08.
- When supposedly separately metered services are impacted by the discontinuance of one service, this is considered to be foreign wiring.
- As mandated by Pennsylvania State law relative to foreign wiring, the 2nd fl account was placed in the owner's name until corrections made and existing debt (\$2,364.56) transferred to the newly established account.
- There was not a debt from Ms. Scott's prior accounts transferred to your account.
- On 6/29/10, company verified the corrections were made and the account was re-established for Ms. Scott at 6244 N. Broad St- 2nd fl.
- Based on our findings in April 2010 and pursuant to Pennsylvania State law, you are responsible for the balance of \$2 364.59 and any unpaid charges that accrued while service was in your name at 6244 N Broad St- 2nd fl.
- The current account balance is \$2,493.55. Company is willing to grant a 12 month payment agreement, if needed.

I can be reached at (215) 841-5915.

Cordially,

Renee Tarpley, MSM
SR Regulatory Assessor



#3



COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA PUBLIC UTILITY COMMISSION
Office of Administrative Law Judge
P.O. BOX 3265, HARRISBURG, PA 17105-3265
October 14, 2011

IN REPLY PLEASE
REFER TO OUR FILE

In Re: **C-2011-2246492**

MICHAEL INGRAM
550 WAVERLY ROAD
GLENSIDE PA 19038

Michael Ingram v. PECO Energy Company

Billing dispute.

Hearing Notice

This is to inform you that a hearing on the above-captioned case will be held as follows:

Type: Initial Hearing

Date: Tuesday, December 13, 2011

Time: 10:00 AM

Location: In an available 4th Floor Hearing Room
(Take one of the last four elevators at the far end of the lobby)
801 Market Street (enter on 8th Street)
Philadelphia, PA 19107

Presiding: Administrative Law Judge Cynthia W. Fordham
Suite 4063
801 Market Street
Philadelphia, PA 19107
Telephone: 215.560.2105
Fax: 215.560.3133

#3

Attention: You may lose the case if you do not come to this hearing and present facts on the issues raised.

You must serve the Presiding Officer with a copy of ANY document you file in this case.

If you intend to file exhibits, two (2) copies of all hearing exhibits to be presented into evidence **must** be submitted to the reporter. An additional copy **must** be furnished to the Presiding Officer. A copy **must** also be provided to each party of record.

Individuals representing themselves do not need to be represented by an attorney. All others (corporation, partnership, association, trust or governmental agency or subdivision) must be represented by an attorney. An attorney representing you should file a Notice of Appearance before the scheduled hearing date.

If you are a person with a disability, and you wish to attend the hearing, we may be able to make arrangements for your special needs. Please call the scheduling office at the Public Utility Commission at least five (5) business days prior to your hearing to submit your request.

If you require an interpreter to participate in the hearings, we will make every reasonable effort to have an interpreter present. Please call the scheduling office at the Public Utility Commission at least ten (10) business days prior to your hearing to submit your request.

- ◆ Scheduling Office: 717.787.1399
- ◆ AT&T Relay Service number for persons who are deaf or hearing-impaired:
1.800.654.5988



#3

C-2011-2246492 - MICHAEL INGRAM v. PECO ENERGY COMPANY

MICHAEL INGRAM
550 WAVERLY ROAD
GLENSIDE PA 19038
215.416.0946

MICHAEL A GRUIN ESQUIRE
STEVENS & LEE
16TH FLOOR
17 NORTH SECOND STREET
HARRISBURG PA 17101
717.255.7365

yes h -

#3



COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA PUBLIC UTILITY COMMISSION
Office of Administrative Law Judge
P.O. BOX 3265, HARRISBURG, PA 17105-3265
December 9, 2011

IN REPLY PLEASE
REFER TO OUR FILE

In Re: **C-2011-2246492**

MICHAEL INGRAM
550 WAVERLY ROAD
GLENSIDE PA 19038

Michael Ingram v. PECO Energy Company

Cancellation Notice

This is to inform you of the following cancellation:

Type: Initial Hearing

Date: Tuesday, December 13, 2011

Time: 10:00 AM

Presiding: Administrative Law Judge Cynthia W. Fordham

Please mark your records accordingly.

#3

C-2011-2246492 - MICHAEL INGRAM v. PECO ENERGY COMPANY

MICHAEL INGRAM
550 WAVERLY ROAD
GLENSIDE PA 19038
215.416.0946

MICHAEL A GRUIN ESQUIRE
STEVENS & LEE
16TH FLOOR
17 NORTH SECOND STREET
HARRISBURG PA 17101
717.255.7365

Michael A. Gruin

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SECRETARY'S BUREAU

Pages 9&10

EXCEPTIONS

LINES 3 and 5 " Conclusion of Law"

Issues:

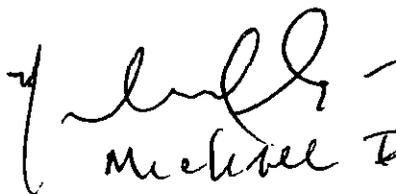
Tenants entire bill can be transferred but not from another location. Tenants bill clearly indicate "TRANSFER SERVICE TO 6244 N. BROAD ST" which imply from. You can see from the two bills that the tenant's bill includes a lot of items that leads to suspicion and cast doubt on its billing history. Compared to my home bill when paid does not have a host of other charges and fees. Burden of proof on PECO to explain why I should be paying what is asked.

Yes, its in the best interest of the public to grant a hearing due to the multiple ruling interpretation

by AIJ's, Commission members, attorney, property owner, utility companies and benefactors

(tenants). The General Assembly did not intend this rule to favor private interest but the public's

interest first. This was never intended to be a " gotcha " rule but a rule of fairness to all that it concerns.


Michael D. Dutton

original

#4

Pages 9&10

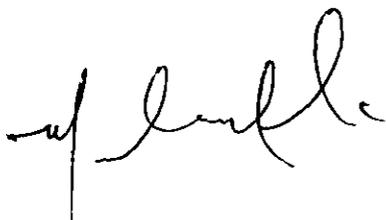
EXCEPTIONS

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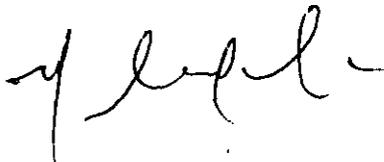
Utility Code, 66 Pa.C.S. § 703(b), the Commission can dismiss a complaint without a hearing if, in its opinion, a hearing is not necessary in the public interest.

The Respondent, the moving party, is entitled to judgment as a matter of law since the Respondent properly transferred the second floor electric account, including the existing arrearage on the account, to the Complainant's account in accordance with Section 1529.1 of the Public Utility Code, 66 Pa.C.S. § 1529.1 and the Commission's decision in *Ace Check Cashing*. Furthermore, the Commission entered an Order on May 6, 2011, dismissing the Complainant's request to have the tenant's balance removed from his account.

Therefore, the Respondent's Motion for Judgment on the Pleadings is granted. Accordingly, the complaint at Docket No. C-2011-2246492 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. When a utility finds foreign load, the utility is required to transfer the tenant's account, including any arrearages, into the landlord's name. *See* 66 Pa.C.S. § 1529.1(a)(c), *Santos v. Metropolitan Edison Company*, C-00967757, (Order entered August 7, 1997), *Ace Check Cashing Inc. v. Philadelphia Gas Works*, Docket No. C-2008-2056428 (Order entered May 21, 2010). The landlord/owner is financially responsible for a tenant's entire account once the foreign load is verified on the tenant's service, not just the portion of the bill related to the foreign load. *Id.*
4. That pursuant to the doctrine of claim preclusion or *res judicata*, matters which were actually litigated in a prior action, as well as those issues which should have been



litigated in that action, will not be relitigated in a subsequent action. *Day v Volkswagenwerk Aktiengesellschaft*, 318 Pa. Superior Ct., 474 A. 2d 1313, 1316, 1317 (1983).

5. That the Commission can dismiss a complaint without a hearing if, in its opinion, a hearing is not necessary in the public interest. Section 703 of the Public Utility Code, 66 Pa.C.S. § 703(b), *Anthony Cannon v. Verizon Pennsylvania Inc.* C-20043729 (Order entered June 29, 2005).

ORDER

THEREFORE,

IT IS ORDERED:

1. That the Motion for Judgment on the Pleadings filed by PECO Energy Company in this matter is granted.
2. The complaint filed by Michael Ingram against PECO Energy Company at Docket C-2011-2246492 is dismissed in its entirety.
3. That the record in this case is marked closed.

Date: July 27, 2012

Cynthia Williams Fordham
Cynthia Williams Fordham
Administrative Law Judge

[Handwritten signature]

Name: HELISHA S LOVETT
Account Number: 22591-53094
Phone Number: 267-582-0879
Service Address: 6244 N BROAD ST, 2ND FL,
PHILADELPHIA

Billing Summary

Bill Date	06/20/2011
Connection charge - standard	\$6.00
Budget bill charges from previous bill	\$52.00
Budget bill charges from previous bill	\$52.00
Budget bill charges from previous bill	\$52.00
Reconnect charge	\$75.00
Reconnect charge	\$75.00
Charges from previous bill	\$663.34
Transfer service	\$919.05
Transfer service 6244 N BROAD ST PHILADELPHIA	\$201.87
Late payment charge	\$426.51
Total Other Charges	\$2,522.77
Current Period Charges	
Electric	\$79.41
Total New Charges	\$79.41
Total amount due on 07/12/2011	\$2,602.18

General Information

Next scheduled meter reading: July 20, 2011
PECO, 2301 Market St, Philadelphia, PA 19103-1380. If you have any questions or concerns, please call 1-800-494-4000 before the due date.

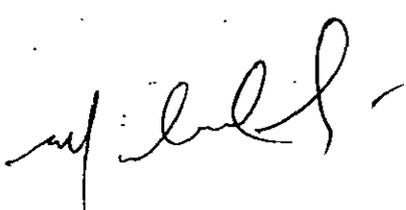
- Customer Self Service - Manage Your Account 24/7
- www.peco.com/ebill - Go paperless: receive and pay your bill
 - www.peco.com/service - Start, stop and transfer your service
 - www.peco.com/SmartIdeas - Save energy and money
 - Pay by phone with credit/debit card at 1-877-432-9384 (\$3.50 fee)

Message Center

You are on the Customer Assistance Program (CAP) Rate. You are saving money by paying a CAP rate.
New charges contain estimated total state taxes of \$5.74, including \$4.81 for State Gross Receipts Tax.

When paying in person, please bring the entire bill.

(continued on next page)



#4



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.

Name: MICHAEL INGRAM
 Account Number: 08285-00205
 Phone Number: 215-885-9651
 Service Address: 550 WAVERLY RD, GLENSIDE

Billing Summary

Bill Date	08/23/2012
Thank you for your payment of \$267.64	
Charges from previous bill	\$2,493.51
Total Other Charges	\$2,493.51
Current Period Charges	
Gas	\$37.63
Electric	\$229.43
Total New Charges	\$267.06
Total Amount Due on 09/14/2012	\$2,760.61

General Information

Next scheduled meter reading: September 21, 2012
 PECO, 2301 Market St, Philadelphia, PA 19103-1380. If you have any questions or concerns, please call 1-800-494-4000 before the due date.
 Si tiene alguna pregunta, favor de llamar al numero 1-800-494-4000 antes de la fecha de vencimiento.

Message Center

New charges contain estimated total state taxes of \$5.05, including \$4.01 for State Gross Receipts Tax.
 Your estimated electric price to compare is \$0.0864 per kWh

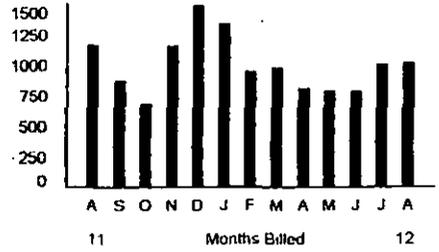
- Customer Self Service - Manage Your Account 24/7**
- www.peco.com/ebill - Go paperless: receive and pay your bill
 - www.peco.com/service - Start, stop and transfer your service
 - www.peco.com/SmartIdeas - Save energy and money
 - Pay by phone with credit/debit card at 1-877-432-9384 (\$3.50 fee)

ENERGY PLUS HOLDINGS LLC, 3711 MARKET ST., STE. 1000, PHILADELPHIA, PA 19104, 877-232-7052

*OK \$220.00
 267.06
 8/27/12*

When paying in person, please bring the entire bill.

(continued on next page)



Period	Usage	Avg Daily Usage	Days	Avg Daily Temp
Current Month	1,015	35.0	29	79
Last Month	1,005	31.4	32	81
Last Year	1,163	40.1	29	79

Avg kWh per Month	988
Total Annual kWh Usage	11,858

Michael Ingram



DO NOT MAIL THIS PORTION WITH YOUR PAYMENT

#4

26. The Fantaziers did not pay anything toward their electric service during the pendency of this matter because “something would have been taken care of and they [PPL] would have taken out those charges, whatever.” NT 34

27. The Respondent did not pursue payment from the Fantaziers over a thirteen-month period.

DISCUSSION

This formal complaint relates to a husband and wife/landlord and husband and wife/tenant dispute, and the transfer of the tenants’ electric service account balance into the landlords’ account upon discovery of foreign load on the tenants’ service. It was abundantly clear during the hearing that there is significant animosity between the landlords and their former tenants. I will address whether the transfer of the tenants’ account balance to the Complainants was appropriate, who is responsible to pay what, and whether the utility’s service and actions in this matter were appropriate under the mandates of the Public Utility Code.

Burden of Proof

The Complainants, as the party seeking affirmative relief from this Commission, bear the burden of proof. *See*, 66 Pa. C.S. § 332(a). The term “burden of proof” means a duty to establish a fact by a preponderance of the evidence. Se-Ling Hosiery v. Margulies, 364 Pa. 45, 70 A.2d 854 (1954); and Feinstein v. Philadelphia Suburban Water Company, 50 Pa. P.U.C. 300 (1976). The term “preponderance of the evidence” means one party must present evidence that is more convincing, by even the smallest amount, than the evidence presented by the other party. *Id.* Accordingly, one must review the record in this case to determine whether the Complainants have satisfied their burden of proof. If the review indicates the burden has been satisfied, one must then determine whether the Respondent submitted evidence of co-equal value or weight to refute the Complainants’ evidence. If this has occurred, the burden of proof cannot be satisfied, unless the party bearing the burden of proof presents additional evidence. Morissey v. Pa. Dept.



of Highways, 424 Pa. 87, 225 A.2d 895 (1967); and Burleson v. Pa. P.U.C., 443 A.2d 1373 (Pa. Cmwlth. 1982), *affirmed*, 501 Pa. 443, 461 A.2d 1234 (1983).

Substantial evidence must support the Commission's decision. *See, e.g.*, Section 704 of the Administrative Agency Law, 2 Pa. C.S. §704; and Yellow Cab Company v. Pa. P.U.C., 524 A.2d 1069 (Pa. Cmwlth. 1987). The term "substantial evidence" means such relevant evidence that a reasonable mind may accept as adequate to support a conclusion. More is required than a mere trace of evidence or a suspicion of the existence of a fact sought to be established. Norfolk & Western Ry. Co. v. Pa. P.U.C., 489 Pa. 109, 413 A.2d 1037 (1980); Erie Resistor Corp. v. Unemployment Comp. Bd. of Review, 194 Pa. Superior Ct. 278, 166 A.2d 96 (1961); and Murphy v. Pa. Dept. of Public Welfare, White Haven Center, 480 A.2d 382 (Pa. Cmwlth. 1984). In order to establish a sufficient case against a utility to satisfy the burden of proof, a Complainant must show the utility is responsible or accountable for the problem described in the complaint. Feinstein, supra. Under these mandates, the Complainants must show that the transfer of the balance (or portions thereof) of the tenants' electric service account to their own was improper.

Foreign Load

By law, the Respondent must comply with legislative mandates governing the provision of public utility service in landlord-tenant situations. Section 1529.1 of the Public Utility Code, 66 Pa. C. S. § 1529.1, addresses such situations, and reads as follows:

§ 1529.1. Duty of owners of rental property

(a) **Notice to public utility** - It is the duty of every owner of a residential building or mobile home park which contains one or more dwelling units, not individually metered, to notify each public utility from whom utility service is received of their ownership and the fact that the premises served are used for rental purposes.

(b) **History of account** - Upon receipt of the notice provided in this section, if the mobile home park or residential building contains one or more dwelling units not individually metered, an



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, et al. v. Pa. PUC*, 485 A.2d 1217, 1222 (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.

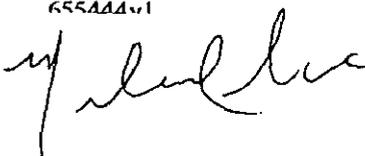
Section 332(a) of the Code, 66 Pa. C.S. § 332(a), provides that the party seeking affirmative relief from the Commission has the burden of proof. In this proceeding, the Complainants alleged that they were improperly charged an overdue balance for electric service that preceded the discovery of foreign load and should have been returned to the Tenants' account. Thus, it is clear that the Complainants bear the burden of proof in this proceeding. The Pennsylvania Supreme Court has held that when a litigant has the "burden of proof," it means that his claim will not be accepted until he offers sufficient proof to support it. *Se-Ling Hosiery v. Margulies*, 364 Pa. 45, 48-49, 70 A.2d 854, 856 (1950). In matters before the Commission, the burden of proof is met when the party establishes the necessary facts by a preponderance of the evidence. A preponderance of the evidence is that degree of proof which "fairly out-weighs the probative value of any proof offered against the claim." *Id.* (emphasis in original).

§ 1529.1. Duty of owners of rental property

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(b) HISTORY OF ACCOUNT. - Upon receipt of the notice provided in this section, if the mobile home park or residential building contains one or more dwelling units not individually metered, an affected public utility shall forthwith list the account for the premises in question in the name of the owner, and the

655444.v1



#4

Agency: PUC (PUC)
 Floor: PUC
 External Carrier: FedEx Express

9/5/2012 10:17:37 AM



Part # 156297-435 MILZ 0012

SHIP DATE: 04SEP12
 ACTWGT: 3.4 LB
 CAD: OFFFC1302
 DIMS: 0x0x0 IN

BILL SENDER

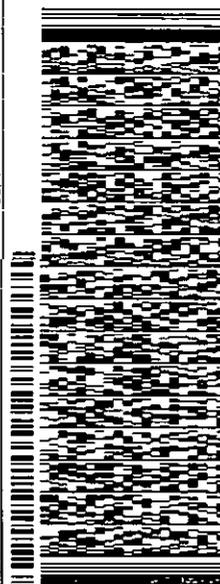
ORIGIN ID: MUVA

UNITED STATES US

TO SECRETARY OF THE COMMISSION
 PENNSYLVANIA PUBLIC UTILITY C
 400 NORTH ST
 KEYSTONE BUILDING 2ND FLR
 HARRISBURG PA 17105

REF: (717) 787-3490

DEPT: PO1



TRK# 8009 8121 6760
 0200

WED - 05 SEP A2
 STANDARD OVERNIGHT

ZN MDTA

17105
 PA-US MDT



FedEx Express NEW Package US Airbill

FedEx Tracking Number 8009 8121 6760

1 From [Redacted] Date 9/4/12

Sender's Name Michael E INGRAM Phone 215 416 0946

Company

Address 550 WAVERLY Rd
 GLENSIDE State PA ZIP 19038

2 Your Internal Billing Reference

3 To Recipient's Name SECRETARY OF THE COMMISSION Phone 717 787-3490

Company Pennsylvania Public Utility Commission
 Keystone Building 2nd FL

HOLD Weekday
 FedEx location address
 REQUIRED, NOT available for
 FedEx First Overnight

Form ID No. 0200

4 Express Package Service *To most locations.
 NOTE: Service order has changed. Please select carefully.

Next Business Day

- FedEx First Overnight
Earliest next business morning delivery to select locations. Friday shipments will be delivered on Monday unless SATURDAY Delivery is selected.
- FedEx Priority Overnight
Next business morning. Friday shipments will be delivered on Monday unless SATURDAY Delivery is selected.
- FedEx Standard Overnight
Next business afternoon. Saturday Delivery NOT available.

2 or 3 Business Days

- FedEx 2Day A.M.
Second business morning. Saturday Delivery NOT available.
- FedEx 2Day
Second business afternoon. Thursday shipments will be delivered on Monday unless SATURDAY Delivery is selected.
- FedEx Express Saver
Third business day. Saturday Delivery NOT available.

5 Packaging *Declared value limit \$500

- FedEx Envelope*
- FedEx Pak*
- FedEx Box
- FedEx Tube
- Other

6 Special Handling and Delivery Signature Options

- SATURDAY Delivery
NOT available for FedEx Standard Overnight, FedEx 2Day A.M., or FedEx Express Saver.
- No Signature Required
Package may be left without obtaining a signature for delivery.
- Direct Signature
Someone at recipient's address may sign for delivery. Fee applies.
- Indirect Signature
If one is available at recipient's address, someone at a neighboring address may sign for delivery. For residential deliveries only. Fee applies.

Does this shipment contain dangerous goods?

- Yes
- Yes
- Dry Ice

fedex.com 1.800.GoFedEx 1.800.463.3339

fedex.com 1.800.GoFedEx 1.800.463.3339