

Legal Department

Exelon Business Services Company
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September 7, 2012

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

Re: Michael Ingram v. PECO Energy Company
PUC Docket No. C-2011-2246492

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.

cc: Michael Ingram

REPLY EXCEPTIONS

PECO Energy Company (“PECO Energy”) hereby replies to the Exceptions filed by Michael Ingram (“Complainant”) in the above-referenced matter on September 4, 2012. On June 4, 2011, Complainant filed a formal complaint against PECO Energy at docket number C-2011-2246492. In his formal complaint, Complainant claims that he owns a duplex located at 6244 North Broad Street, Philadelphia, PA. See Formal Complaint, attached hereto as Exhibit “1”. Complainant alleges that a second floor tenant in his duplex became aware, after her electric service was disconnected, that a light from the first floor was attached to her second floor electric circuit. See Exhibit “1”. As a result, PECO Energy transferred the second floor tenant’s \$2,500 electric utility bill into his personal electric account. See Exhibit “1”. The Complainant requests in his complaint that the PUC remove all of the charges from his account and return the charges to the tenant who originated them. See Exhibit “1”. Respondent, PECO Energy filed an Answer with New Matter on July 5, 2011, stating that the Complainant had filed a nearly identical formal complaint at docket number F-2010-2212426.

The formal complaint at docket number F-2010-2212426 stated the same facts as the second formal complaint. The Complaint states that the Complainant owns a duplex apartment building at 6244 North Broad Street, Philadelphia, PA. See Formal Complaint at docket number F-2010-2212426, attached hereto as Exhibit “2”. The Complaint states that the second floor tenant’s electric service was terminated due to non-payment and the first floor tenant’s service was affected by the shut-off. See Exhibit “2”. The Complainant states that PECO Energy determined there was foreign wiring at the property. See Exhibit “2”. As a result, PECO Energy transferred the second floor tenant’s \$2,456.71 balance to the property owner. See Exhibit “2”. The Complainant states that the Complainant should not be responsible to pay for his tenant’s

bill. See Exhibit “2”. The Complaint was adjudicated with an Initial Decision issued by Administrative Law Judge Wayne L. Weismandel. ALJ Weismandel dismissed the formal complaint at docket number F-2010-2212426 on PECO Energy’s Preliminary Objections. See ALJ Weismandel’s Initial Decision, dated 2/23/11, attached hereto as Exhibit “3”. ALJ Weismandel determined that pursuant to 66 Pa.C.S. § 1529.1, PECO Energy properly transferred the tenant’s balance to the Complainant/property owner as a matter of law because foreign wiring had been found at the premises. See Exhibit “3”. The Commission adopted ALJ Weismandel’s Initial Decision by Order entered May 6, 2011. See Commission Order dated 5/6/11, attached hereto as Exhibit “4”.

Because the Complainant filed the current nearly identical complaint at docket number C-2011-2246492, PECO Energy filed a Motion for Judgment on the Pleadings, arguing that the Complainant’s Complaint should be dismissed pursuant to the doctrine of res judicata. On July 27, 2012, Administrative Law Judge Cynthia Williams Fordham issued an Initial Decision, dismissing the Complaint based on the doctrine of res judicata. ALJ Fordham held:

All of the factors necessary for application of claim preclusion exist in this matter. The allegations raised by the Complainant in the two proceedings are identical. In both complaints the Complainant is alleging that there are incorrect charges on his bill and he is requesting that the Commission remove the incorrect charges. Since Mr. Ingram and PECO Energy are the parties in both proceedings, the parties are identical. The Complainant is the customer in both complaints and PECO is the public utility providing service to the Complainant.

The Complainant filed at Docket No. C-2011-2246492 is identical to the complaint previously filed at Docket No. F-2010-2212426. Since the Commission entered a final order at Docket No. F-2010-2212426, the Complainant cannot litigate that complaint again. It is not in the public interest to have a hearing in this matter.

Therefore, the Respondent's Motion for Judgment on the Pleadings is granted. Accordingly, the complaint at Docket No. C-2011-2246492 is dismissed.

See ALJ Fordham, Initial Decision, dated 7/27/12, attached hereto as Exhibit "5".

The Commission should sustain the Initial Decision of ALJ Fordham. The 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. Specifically, in his exceptions the Complainant states:

1. 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.
2. How did the utility company allow much (sic) a high bill by the tenant. Utility company did not provide "neither reasonable nor efficient service to their customers (tenant and property owner)."
3. Late fees, reconnect fees, connection charges, other charges and transfer fees should not be charged to the property owner.
4. No charges from another location shall be the responsibility of the property owner.
5. PECO bill dated 07/12/2011 clearly indicated multiple charges especially Transfer service fee and charges from previous bill.
6. 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 Street to time account was transferred back to the tenant name.

See Complainant's Exceptions, dated 9/4/12, attached hereto as Exhibit "6".

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 Complainant's exceptions clearly demonstrate that he is attempting to re-litigate the foreign wiring formal complaint he filed at docket number F-2010-2212426. Like the formal complaint filed under that docket number, the Complainant's exceptions dispute the fact that PECO Energy transferred his tenant's balance to him because foreign wiring was found at his property located at 6244 North Broad Street, Philadelphia, PA. Similarly, the Complainant's exceptions are disputing the same exact issues raised again in the second formal complaint filed under docket number C-2011-2246492. As ALJ Fordham correctly stated in her Initial Decision, regarding PECO Energy's Motion for Judgment on the Pleadings:

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.

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.

See Exhibit "5".

The record clearly demonstrates that the issue of foreign wiring and the balance transfer at the Complainant's rental property has been properly decided and dismissed as a matter of law under dockets F-2010-2212426 and C-2011-2246492. As both ALJ Weisman and ALJ Fordham have determined, 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.A. § 1529.1. Through his exceptions, the Complainant cannot now attempt to re-litigate this claim. ALJ Fordham correctly concluded that the Complainant's case should be dismissed pursuant to the doctrine of res judicata. 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**

MICHAEL INGRAM	:	
	:	
COMPLAINANT	:	
	:	
v.	:	Docket No. C-2011-2246492
	:	
PECO ENERGY COMPANY,	:	
	:	
RESPONDENT	:	
	:	

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).

**Michael Ingram
550 Waverly Road
Glenside, PA 19038**

Dated at Philadelphia, Pennsylvania, September 7, 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”

PENNSYLVANIA PUBLIC UTILITY COMMISSION

Formal Complaint Form

RECEIVED

JUN 04 2011

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 Michael Ingram

Street/P.O. Box 550 Waverly Rd Apt # _____

City Glenside State PA Zip 19038

County Montgomery

Daytime Telephone Number Where We Can Contact You: (215) 416-0946

E-mail Address (optional): _____

Utility Account Number 08285-00205
(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).

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JUN 04 2011

B. **State the facts of your complaint.**

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

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.

I own a duplex at 6244 N. Broad St. A tenant that resides on the 2nd floor had her electricity turned off by PECO. PECO noticed that there was a light from the 1st floor attached to the 2nd floor breaker. The 1st floor tenant noticed her porch light was out and contacted the office and PECO. We corrected the issue within 2 days and considered the matter closed.

The 2nd floor tenant called PECO to make arrangements for the electricity to be restored. PECO could not restore the power to the property without confirming that the corrections were made on the 1st floor. The 2nd floor and 1st floor tenants made arrangements, without notifying the office, to have PECO come out and confirm the corrections has been made and to restore the power to the 2nd floor. Had we known we would have had a key ready since our office is only two doors from the property.

They were scheduled to come out but missed their appointment time and came late; the 1st floor tenant had to leave for work and couldn't stay. When PECO finally arrived the tenant was gone and they came to the office to gain access to the property. I shared with him we are not allowed to access any tenant property with the key, without 1st giving the tenant notice. The PECO technician rudely and unprofessionally got upset and stormed out saying how he doesn't have time for this; he has other customers to deal with today. Had the technician been understanding about our position and limitations, he could have come back at a later time and this matter would not have gone so far.

Soon after, I received a notification from PECO informing me about the seriousness of the problem. I immediately contacted PECO to come out, but was appalled by PECO wasn't able to come out until almost a week later. I soon after received a statement that I was liable for the bill along with the delinquent portion which was in excess of \$2500 in charges; which I don't understand how a bill could be that high.

This bill has since been transferred to my personal home account and now my electric, which has always been paid and current, is being threatened turned off.

5. RELIEF

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

I have spoken to the tenant and she agrees to take the bill back. I would like the PUC to remove all charges and place it back where the bill originated. I would like notification that everything has been finalized. Lastly, I would like any and all negative markings on my credit report from PECO and the credit bureau to be removed due to this transaction. I spoke to the tenant and she acknowledges that this shouldn't have happened and is willing to take off work to attend any hearings resolve the matter. If anyone wishes to speak to her or need her to put something in writing she is readily available.

RECEIVED

JUN 04 2011

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

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.

RECEIVED

JUN 04 2011

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

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 _____

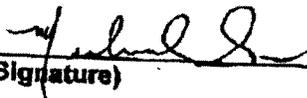
E-mail Address (If Known) _____

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 Michael Ingram, 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).


(Signature)

7/3/11
(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
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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.

RECEIVED

JUN 04 2011

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

EXHIBIT “2”

BCS 2714830
timely

PENNSYLVANIA PUBLIC UTILITY COMMISSION

Formal Complaint Form

RECEIVED

NOV 20 2010

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 MICHAEL INGRAM, SR.

Street/P.O. Box 6240 N. Broad Street Apt # _____

City Philadelphia State PA Zip 19141

County Philadelphia

Daytime Telephone Number Where We Can Contact You: (215) 927-3010

E-mail Address (optional): _____

Utility Account Number 22591-53085
(from your bill)

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

Name Alicia Lovett

Street/P.O. Box 6244 N. Broad Street, 2nd Floor

City Philadelphia State PA Zip 19141

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

SECRETARY'S BUREAU
2010 NOV 20
AH 10:05
RECEIVED

(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).

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.

Complainant/Landlord owns duplex apartment building at 6244 N. Broad Street, Philadelphia, Pennsylvania. Both apartments individually metered for electric service and had service in their respective names. Complainant's lease states that tenant is responsible for electric service and the lease was to be produced when applying for service with PECO.

Hence, PECO had notice that said premises was individually metered.

In or around June, 2010, second floor tenant's electric service was terminated due to non-payment. First floor tenant's service was affected by the shut-off, service was lost in his apartment and contacted PECO. PECO's technician came out but could not obtain access to first floor apartment as the tenant was not at home. Landlord could not allow access under the Pennsylvania Landlord-Tenant law. A PECO technician returned two weeks later and discovered a wiring issue where a portion of first floor service was being used by the second floor apartment. Complainant corrected the problem immediately.

PECO cited Complainant/Landlord with a foreign wiring citation and included the second floor tenant's delinquent balance for non-payment. PECO is seeking a total of \$ 2,456.71. This was in error

Pursuant to 66 PA C.S.A. § 1529.1 the landlord is responsible for electric service from the time the wiring issue is discovered until it is resolved. Pursuant to Section 1 (b), the tenant must notify the utility that the premise was individually metered. As a result the tenant is responsible for payment for electric service. PECO is in error for charging Complainant for the second floor tenant's delinquent balance. He should only be charged for the time between the wiring issue was discovered and then corrected.

5. RELIEF

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

Claimant requests that he bill charged from the date the faulty wiring was discovered to the time it was corrected and not be responsible to pay his second floor tenant's delinquent bill.

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 SUSAN C. MOODY, ESQUIRE

Street Suite 200, Two Penn Center

City Philadelphia State PA Zip 19090

Area Code/Phone Number 215 854-4013

E-mail Address (If Known) moodylawoffice@verizon.net

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 Michael Dogram, Sr., 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).

[Signature] _____ 11/20/10
(Signature) (Date)

President
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.

EXHIBIT “3”

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Michael Ingram, Sr.

v.

PECO Energy Company

:
:
:
:
:
:

F-2010-2212426

INITIAL DECISION

Before
Wayne L. Weisman
Administrative Law Judge

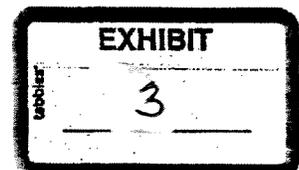
HISTORY OF THE PROCEEDING

On November 20, 2010, Michael Ingram, Sr. (complainant), through his attorney Susan C. Moody, Esquire, filed a formal Complaint (Complaint) against PECO Energy Company (respondent) with the Pennsylvania Public Utility Commission (Commission), Docket Number F-2010-2212426. The Complaint contested respondent's placing of an account with an outstanding balance in the name of a former tenant of complainant in complainant's name.

The Complaint was served on the respondent on November 29, 2010.

On December 17, 2010, the respondent filed its Preliminary Objection to the Complaint, endorsed with a Notice to Plead.

On December 20, 2010, the respondent filed its Answer and New Matter (Answer), endorsed with a Notice to Plead, averring that its actions were taken pursuant to the requirements of 66 Pa.C.S. § 1529.1.



By letter dated December 27, 2010, addressed to the Commission's Secretary, complainant's counsel requested an extension of time to respond to respondent's Preliminary Objection. Complainant's answer to the Preliminary Objection was due not later than December 30, 2010, 52 Pa.Code §§ 5.101(f)(1), 1.12(a), 1.55(a) and (b), 1.56(a)(1) and (b). Complainant's counsel requested that the due date be extended to January 10, 2011. There is no indication in the Commission's official file for this case that any action was ever taken with respect to this request.

By letter dated January 10, 2011, addressed to the Commission's Secretary, complainant's counsel advised that complainant "discharged [her] representation." Ms. Moody also stated that complainant would appreciate additional time to retain new counsel and file an answer to respondent's Preliminary Objection and that, to that end, he "will contact your office accordingly." Again, there is no indication in the Commission's official file for this case that any action was taken with respect to this request or that complainant ever contacted the Commission's Secretary's office.

By Motion Judge Assignment Notice dated February 15, 2011, the case was assigned to me for a ruling on the Preliminary Objection. As set forth above, complainant's answer to respondent's Preliminary Objection was due not later than December 30, 2010, no requested extension ever having been granted. Even assuming that complainant's now-discharged counsel's request for an extension had been granted, the answer would have been due not later than January 10, 2011. To date, complainant has not filed an answer to respondent's Preliminary Objection.

FINDINGS OF FACT

1. Complainant owns the real property known as 6244 North Broad Street, Philadelphia, Pennsylvania (Premises).
2. The Premises is a duplex apartment building with an apartment on the first floor and another apartment on the second floor.

3. Respondent provides electric service to the Premises.
4. At all relevant times, the two apartments were leased to two different tenants.
5. In or around June, 2010, respondent determined that there was foreign load on the meter for the second floor apartment.
6. Upon discovering the foreign load respondent transferred the second floor tenant's account into the name of complainant, to include the existing arrearage on the account.
7. Complainant filed a Complaint on November 20, 2010, seeking a Commission order absolving him of responsibility for the arrearage from the second floor tenant's account that respondent transferred to complainant.

DISCUSSION

Respondent determined the existence of a foreign load situation on complainant's real property in or around June, 2010. Respondent made this determination based upon its investigation at the premises owned by complainant and its interpretation of the requirements of Act 54 of 1993, specifically what is now contained in 66 Pa.C.S.A. § 1529.1. Act 54 of 1993 became effective on September 1, 1993.

Section 1529.1 of the Public Utility Code, 66 Pa.C.S.A. § 1529.1, 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 affected public utility shall forthwith list the account for the premises in question in the name of the owner, and the owner shall thereafter be responsible for the payment for the utility services rendered thereunto. In the case of individually metered dwelling units, unless notified to the contrary by the tenant or an authorized representative, an affected public utility shall list the account for the premises in question in the name of the owner, and the owner shall be responsible for the payment for utility services to the premises.

(c) Failure to give notice. - Any owner of a residential building or mobile home park failing to notify affected public utilities as required by this section shall nonetheless be responsible for payment of the utility services as if the required notice had been given.

The Commission has clearly established that the presence of foreign load prevents a dwelling unit from being deemed "individually metered" as that term is used in 66 Pa.C.S.A.

§ 1529.1. *David P. Boyce v. Duquesne Light Company*, Docket Number Z-00223698, Opinion and Order adopted June 30, 1994, entered September 1, 1994, *Elizabeth Santos v. Metropolitan Edison Company*, Docket Number C-00967757, Opinion and Order adopted July 10, 1997, entered August 7, 1997. Foreign load exists where tenants have a meter and are direct utility customers and utility service for other tenants or for the landlord is being billed through their meter. *Boyce* at 4-5. In other words, foreign load is utility service which is not related to serving a tenant, but for which the tenant is being billed. *Santos* at 4. Section 1529.1 of the Public Utility Code, 66 Pa.C.S.A.

§ 1529.1, requires that an affected public utility "shall forthwith list the account for the premises in question in the name of the owner" when a residential building contains one or more dwelling units not individually metered. 66 Pa.C.S.A. § 1529.1(b).

In this case, the Premises, owned by complainant is a residential building (i.e., a building containing one or more dwelling units occupied by one or more tenants. 66 Pa.C.S.A. § 1521). Complainant, having the burden of proof, did not contest respondent's discovery of foreign load at the Premises. Rather, complainant only contests the transference of a tenant's arrearage into his name when respondent complied with the mandate of the statute.

I am not unsympathetic to complainant's position that it is unfair to transfer a tenant's entire unpaid balance to the landlord for a *de minimus* foreign load as existed here. Foisting a tenant's delinquent utility bill, for which the tenant (by not paying) and the utility (by not collecting), but not the landlord, share responsibility, onto the landlord appears to me to be a case of two wrongs not making a right. However, the Commission has clearly spoken and the policy established in *Elizabeth Santos v. Metropolitan Edison Company*, Docket Number C-00967757, Opinion and Order adopted July 10, 1997, entered August 7, 1997, cannot be ignored. See, also, *Edmund V. Corazzini v. UGI Penn Natural Gas, Inc.*, Docket Number F-2009-2101282, Opinion and Order adopted July 15, 2010, entered July 16, 2010.

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

The applicable law, as set forth above, as applied to the facts of this case dictates that complainant is liable to respondent for the entire amount transferred to his account from the account previously maintained in the name of his tenant.

Commission preliminary objection practice is comparable to Pennsylvania civil practice respecting the filing of preliminary objections. Cf., *Equitable Small Transportation Intervenors v. Equitable Gas Company*, 1994 Pa PUC LEXIS 69, Docket No. C-00935435 (July 18, 1994).

The Commission's regulations provide, in relevant part:

(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.

...
(4) Legal insufficiency of a pleading.
52 Pa.Code §§ 5.101(a)(1), 5.101(a)(4)

The Commission must act within, and cannot exceed, its jurisdiction. *City of Pittsburgh v. Pa. Public Utility Comm'n*, 157 Pa.Super. 595, 43 A.2d 348 (1945).

Subject matter jurisdiction is a prerequisite to the exercise of the power to decide a controversy. Cf., *Hughes v. Pa. State Police*, 152 Pa.Cmwlt. 409, 619 A.2d 390 (1992), app. denied, 536 Pa. 633, 637 A.2d 293 (1993).

Jurisdiction may not be conferred by the parties where none exists. *Roberts v. Martorano*, 427 Pa. 581, 235 A.2d 602 (1967). Neither silence nor agreement of the parties will confer jurisdiction where it otherwise would not exist, *Commonwealth v. VanBuskirk*, 303 Pa.Super.

148, 449 A.2d 621 (1982), nor can jurisdiction be obtained by waiver or estoppel, *Scott v. Bristol Twp. Police Dep't*, 669 A.2d 457 (Pa. Cmwlth. 1995).

However, the distinction between subject matter jurisdiction and the power to grant relief must be kept in mind.

Jurisdiction and power are not interchangeable although judges and lawyers often confuse them – *Hellertown Borough Referendum Case*, 354 Pa. 255, 47 A.2d 273 (1946). Jurisdiction relates solely to the competency of the particular court or administrative body to determine controversies of the general class to which the case then presented for its consideration belongs. Power, on the other hand, means the ability of a decision-making body to order or effect a certain result. *Delaware River Port Auth. v. PA Public Utility Commission*, 408 Pa. 169, 178, 182 A.2d 682, 686 (1962); see also *Beltrami Enterprises, Inc. v. Commonwealth of PA, Dep't of Environmental Resources*, 159 Pa. Commw. 72, 632 A.2d 989, 993 (Pa. Commw. 1993) (fact that administrative agency may not have power to afford relief in particular case presented is of no moment to determination of its jurisdiction over general subject matter of controversy).

Riedel v. The Human Relations Comm'n Of the City Of Reading, 559 Pa. 33, 39 – 40, 739 A.2d 121, 124 (1999). See, also, *In Re: Melograne*, 571 Pa. 490, 812 A.2d 1164 (2002), *Bell Telephone Co. of PA v. Philadelphia Warwick Co.*, 355 Pa. 637, 50 A.2d 684 (1947).

The Commission does have subject matter jurisdiction with respect to disputes arising under 66 Pa.C.S.A. § 1529.1. For example, a case in which the landlord contested the utility's supposed finding of foreign load at his property would clearly be within the Commission's jurisdiction to adjudicate. What the Commission does not have, as it has recognized in cases such as *Ace Check Cashing Inc. v. Philadelphia Gas Works, Eddie and Jennifer West, Indispensible Parties*, Docket Number C-2008-2056428, Opinion and Order adopted April 22, 2010, entered May 21, 2010, and *Edmund V. Corazzini v. UGI Penn Natural Gas, Inc.*, Docket Number F-2009-2101282, Opinion and Order adopted July 15, 2010, entered July 16, 2010, is the power to afford the relief sought by the complainant in this case.

Section 1529.1 places the responsibility to pay the utility bills on the landlord until the foreign load is corrected. Once the foreign load is corrected by the landlord and verified by the utility, the utility places the account back in the name of the tenant. However, the arrearage, if any, is to remain with the landlord. There is no *de minimus* exception and any dispute regarding the financial responsibilities of the parties is a matter to be resolved in the Court of Common Pleas . . .

Edmund V. Corazzini v. UGI Penn Natural Gas, Inc., Docket Number F-2009-2101282, Opinion and Order adopted July 15, 2010, entered July 16, 2010, at 7.

Respondent's Preliminary Objection, which cites to both 52 Pa.Code §§ 5.101(a)(1) and 5.101(a)(4), must be denied as to the claim that the Commission lacks jurisdiction, but will be granted on the alternative basis of legal insufficiency.

What 52 Pa.Code § 5.101(a)(4) addresses is comparable to Pa.R.C.P. 1028(a)(4), "legal insufficiency of a pleading (demurrer)." The principles applied in ruling upon a demurrer are well-settled.

[W]hen ruling on preliminary objections, [the] Court considers as true all well-pleaded facts which are material and relevant. Specifically, a preliminary objection in the nature of a demurrer is deemed to admit all well-pleaded facts and all inferences reasonably deduced therefrom. In determining whether to sustain a demurrer the court need not accept as true conclusions of law, unwarranted inferences from facts, argumentative allegations, or expressions of opinion. A demurrer will not be sustained unless the face of the complaint shows that the law will not permit recovery, and any doubts should be resolved against sustaining the demurrer.

Giffin v. Chronister, 151 Pa.Cmwlth. 286, 290, 616 A.2d 1070, 1072 (1992) (citations omitted).

In a case such as this one, where the complainant only seeks a Commission order removing the tenant's transferred arrearage from his account, the Commission is without the power to grant the relief sought. The Commission is granted discretion to "dismiss any complaint without a hearing if, in its opinion, a hearing is not necessary in the public interest." 66 Pa.C.S.A. § 703(b). A hearing is necessary only to resolve disputed questions of fact, and when the question presented is

one of law, the Commission need not hold a hearing. *Lehigh Valley Power Comm'n v. Pa. Public Utility Comm'n*, 128 Pa.Cmwlth. 259, 563 A.2d 548 (1989), *Edan Transportation Corp. v. Pa. Public Utility Comm'n*, 154 Pa.Cmwlth. 21, 623 A.2d 6 (1993). This case does not involve disputed questions of fact. The question presented is one of law only. Inasmuch as the Commission is without the power to grant the only relief requested by the complainant, a hearing in this case is not necessary. A hearing would be a fruitless exercise.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the parties to and the subject matter of this case.
2. As the proponent of a rule or order, complainant had the burden of proof in this matter pursuant to 66 Pa.C.S.A. § 332(a).
3. Foreign load exists where tenants have a meter and are direct utility customers and utility service for other tenants or for the landlord is being billed through their meter.
4. The presence of foreign load prevents a dwelling unit from being deemed "individually metered" as that term is used in 66 Pa.C.S.A. § 1529.1.
5. 66 Pa.C.S.A. § 1529.1 requires that an affected public utility "shall forthwith list the account for the premises in question in the name of the owner" when the tenant's account has foreign load.
6. When a public utility acts to transfer a tenant's account into the name of the landlord pursuant to the provisions of 66 Pa.C.S.A. § 1529.1, the transferred amount includes any existing arrearage of the tenant.

7. When acting in accordance with the provisions of 66 Pa.C.S.A. § 1529.1, a utility must place the tenant's account in the landlord's name upon discovery of the foreign load and collect unpaid bills only from the landlord. The utility must pursue collection of any unpaid amounts from the landlord and not from the tenant.
8. There is no *de minimus* exception to 66 Pa.C.S.A. § 1529.1.
9. Commission preliminary objection practice is comparable to Pennsylvania civil practice respecting the filing of preliminary objections.
10. The Commission must act within, and cannot exceed, its jurisdiction.
11. Subject matter jurisdiction is a prerequisite to the exercise of the power to decide a controversy.
12. Jurisdiction may not be conferred by the parties where none exists.
13. Neither silence nor agreement of the parties will confer jurisdiction where it otherwise would not exist, nor can jurisdiction be obtained by waiver or estoppel.
14. Jurisdiction and power are not interchangeable.
15. Jurisdiction relates solely to the competency of the particular court or administrative body to determine controversies of the general class to which the case then presented for its consideration belongs.
16. Power means the ability of a decision-making body to order or effect a certain result.

17. The Commission does have subject matter jurisdiction with respect to disputes arising under 66 Pa.C.S.A. § 1529.1.

18. The Commission does not have the power to afford the relief sought by the complainant in this case.

19. Any dispute between the landlord and the tenant regarding the arrearages of the tenant that were transferred to the account of the landlord by a public utility in accordance with the provisions of 66 Pa.C.S.A. § 1529.1 upon discovery of foreign load is a matter to be resolved in the Court of Common Pleas.

20. What 52 Pa.Code § 5.101(a)(4) addresses is comparable to Pa.R.C.P. 1028(a)(4), "legal insufficiency of a pleading (demurrer)."

21. The Commission is granted discretion to "dismiss any complaint without a hearing if, in its opinion, a hearing is not necessary in the public interest."

22. A hearing is necessary only to resolve disputed questions of fact, and when the question presented is one of law, the Commission need not hold a hearing.

23. This case does not involve disputed questions of fact.

24. Inasmuch as the Commission is without the power to grant the only relief requested by the complainant, a hearing in this case is not necessary.

ORDER

THEREFORE,

IT IS ORDERED:

1. That the Preliminary Objection filed December 17, 2010, by PECO Energy Company in the above-captioned case averring lack of jurisdiction of the Pennsylvania Public Utility Commission is denied.

2. That the Preliminary Objection filed December 17, 2010, by PECO Energy Company in the above-captioned case averring legal insufficiency of the Complaint is sustained.

3. That the formal Complaint filed November 20, 2010, by Michael Ingram, Sr. against PECO Energy Company with the Pennsylvania Public Utility Commission, Docket Number F-2010-2212426, is dismissed.

4. That the record at Docket Number F-2010-2212426 be marked closed.

Date: February 23, 2011

Wayne L. Weisman
Administrative Law Judge

EXHIBIT “4”

PENNSYLVANIA
PUBLIC UTILITY COMMISSION
Harrisburg, PA 17105-3265

Public Meeting held May 5, 2011

Commissioners Present:

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

Michael Ingram, Sr.

v.

PECO Energy Company

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F-2010-2212426

ORDER

BY THE COMMISSION:

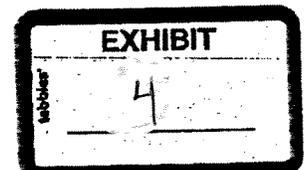
We adopt as our action the Initial Decision of Administrative Law Judge Wayne L. Weisman del, dated February 23, 2011;

THEREFORE,

IT IS ORDERED:

1. That the Preliminary Objection filed December 17, 2010, by PECO Energy Company in the above-captioned case averring lack of jurisdiction of the Pennsylvania Public Utility Commission is denied.

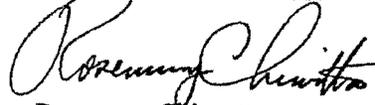
2. That the Preliminary Objection filed December 17, 2010, by PECO Energy Company in the above-captioned case averring legal insufficiency of the Complaint is sustained.



3. That the formal Complaint filed November 20, 2010, by Michael Ingram, Sr. against PECO Energy Company with the Pennsylvania Public Utility Commission, Docket Number F-2010-2212426, is dismissed.

4. That the record at Docket Number F-2010-2212426 be marked closed.

BY THE COMMISSION



Rosemary Chiavetta
Secretary

(SEAL)

ORDER ADOPTED: May 5, 2011

ORDER ENTERED: May 6, 2011

EXHIBIT “5”

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Michael Ingram

v.

PECO Energy Company

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C-2011-2246492

INITIAL DECISION

Before
Cynthia Williams Fordham
Administrative Law Judge

HISTORY OF THE PROCEEDING

On June 4, 2011, Michael Ingram (“Ingram” or “Complainant”) filed a formal complaint against PECO Energy Company (“PECO” or the “Respondent”) alleging the following: that he received a termination notice; that he owns a duplex at 6244 N. Broad Street; that when PECO terminated the electric service of the second floor tenant, the first floor tenant noticed that her porch light was out; that the Complainant corrected the issue within two days; that the Respondent transferred the second floor tenant’s bill to the Complainant’s electric account; and that the second floor tenant agreed to pay the bill. The Complainant requested that the Commission remove all charges related to the second floor account from his electric account.

On July 5, 2011, the Respondent filed an Answer and New Matter. The Respondent raised the defense of *res judicata* and included copies of the Complainant’s first formal complaint at Docket No. F-2010-2212426, which included the issue of whether the second floor tenant’s bill should have been transferred to the Complainant, the Respondent’s preliminary objections, Administrative Law Judge Wayne L. Weismandel’s Initial Decision granting the preliminary objections and dismissing the first formal complaint, and the

Commission Order entered May 6, 2011, adopting the Initial Decision. The Respondent stated that, in response to the first complaint, the Commission properly ruled that the landlord was responsible for the tenant's bill since the Respondent found foreign load.

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

On September 22, 2011, the Respondent filed a Motion for Judgment on the Pleadings with a Notice to Plead.

The Complainant did not respond to the Motion for Judgment on the Pleadings within twenty (20) days of service of the Motion.

By hearing notice dated October 14, 2011, an initial hearing was scheduled for Tuesday, December 13, 2011, at 10:00 a.m.

By Order dated November 28, 2011, the hearing was cancelled pending a ruling on the Respondent's Motion for Judgment on the Pleadings.

The record consists of the pleading in the instant case, Docket No. C-2011-2246492 and the record in the case docketed at F-2010-2212426. The record in the prior case includes the Commission Order entered May 6, 2011, which adopted the Initial Decision dismissing the first complaint.

FINDINGS OF FACT

1. The Complainant is Michael Ingram, 550 Waverly Road, Glenside, PA 19038.
2. The Respondent in this proceeding is the PECO Energy Company.

3. The Complainant owns a duplex apartment building at 6244 North Broad Street, Philadelphia, PA (service address).

4. The first and second floor tenants at the service address have separate electric meters.

5. When the second floor tenant's electric service was terminated in June 2010, the Respondent discovered there was foreign load at the service address.

6. The Respondent 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 decisions in *Ace Check Cashing Inc. v. Philadelphia Gas Works*, Docket No. C-2008-2056428 (Order entered May 21, 2010) ("Ace Check Cashing").

7. The Complainant filed a complaint with the Commission on November 20, 2010, ("2010 complaint") requesting a Commission order stating that he was not responsible for the arrearage from the second floor tenant's account.

8. The Respondent filed a preliminary objection to the 2010 complaint on the grounds that the complaint failed to state a claim upon which relief could be granted.

9. The Complainant did not respond to the Respondent's preliminary objection.

10. By Initial Decision dated February 23, 2011, Administrative Law Judge ("ALJ") Wayne Weismandel granted the Respondent's preliminary objections and dismissed the 2010 complaint.

11. By Order entered May 6, 2011, the Commission upheld ALJ Weismandel's Initial Decision and dismissed the 2010 complaint.

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:

§ 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*

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).

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. For the doctrine to apply four conditions must be met:

- (1) Identity of issues;
- (2) Identity of causes of action;
- (3) Identity of persons and parties to the action; and
- (4) Identity of the quality and capacity of the parties suing or sued.

Day v Volkswagenwerk Aktiengesellschaft, 318 Pa. Superior Ct., 474 A. 2d 1313, 1316, 1317 (1983).

All of the factors necessary for application of claim preclusion exist in this matter. The allegations raised by the Complainant in the two proceedings are identical. In both complaints the Complainant is alleging that there are incorrect charges on his bill and he is requesting that the Commission remove the incorrect charges. Since Mr. Ingram and PECO Energy are the parties in both proceedings, the parties are identical. The Complainant is the customer in both complaints and PECO is the public utility providing service to the Complainant.

The Complainant did not file an answer to the preliminary objection or file exceptions to the Initial Decision at Docket No. F-2010-2212426. Furthermore, he did not file an answer to the Motion for Judgment on the Pleadings in the instant case.

The complaint filed at Docket No. C-2011-2246492 is identical to the complaint previously filed at Docket No. F-2010-2212426. Since the Commission entered a final order at Docket No. F-2010-2212426, the Complainant cannot litigate that complaint again. It is not in the public interest to have a hearing in this matter. Pursuant to Section 703(b) of the Public

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
Administrative Law Judge

EXHIBIT “6”

Page 4

EXCEPTIONS

LINES 12-16

"Susan Afshari v. PPI Electric Utilities Corporation and Kim and Mike Fantazier"
Initial Decision before Ember S. Jandebaur ALJ

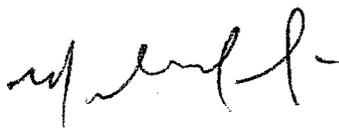
Issues;

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.



Page 5&6

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]

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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.

*rechecked by me
Michael Ferguson*

if I can be

#3

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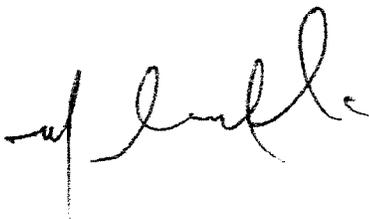
EXCEPTIONS

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 ALJ'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.

A handwritten signature in black ink, appearing to read "up [unclear]".