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September 14, 2012

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

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

Dear Secretary Chiavetta:

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

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

Best Regards,

STEVENS & LEE



Michael A. Gruin

Encl.

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

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A PROFESSIONAL CORPORATION

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

**PECO ENERGY COMPANY'S
REPLY BRIEF**

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

I. The Evidence Clearly Demonstrates That Ms. Andrews is Responsible For The Balance That Accrued at 4839 Haverford Avenue, 2nd Floor.

Ms. Andrew’s assertion that “someone used her name without permission to establish PECO electric service” is not corroborated by any independent evidence, and is completely undermined by the recorded service initiation call wherein Ms. Andrew is clearly heard requesting service in her name. This issue is addressed at length in PECO’s Main Brief.

The citations to the Public Utility Code in Ms. Andrews Main Brief do not support her position and certainly do not justify a ruling in her favor. The definition of “customer” under Section 1403 does not control the outcome of this case. The issue in

this case is a factual one, i.e., did Ms. Andrews initiate electric service in her own name or not. Ms. Andrews, acting as the property owner and landlord of 4839 Haverford Ave., requested electric service in her name for the 2nd floor unit at the building, as confirmed by the recorded service initiation call. Ms. Andrews is therefore PECO's customer pursuant to 66 Pa.C.S.A. 1403 because she is the natural person in whose name a residential account is listed and who is primarily responsible for the payment of bills rendered for service. Because she requested service in her name for the unit that she owns, she is responsible for the payment of the electric bills for that unit during the time that the service was in her name.

The lease between Ms. Andrews and her tenant may assign responsibility for the electric bills as between landlord and tenant, but it has no bearing on the responsibility for the payment of bills from PECO's perspective. PECO can only hold the account holder financially responsible in this situation. Having had no application for service from the tenant (Mr. Clark), PECO cannot hold him responsible or the balance on the account unless he agrees to accept responsibility. This has not happened in this case. PECO could not retroactively place service in the name of Mr. Clark based solely on this lease document, and likewise, the Complainant should not be able to negate her service initiation call by simply providing a copy of a lease which points to her tenant as being responsible for electric service.

Section 1407 also does not support Ms. Andrews' position. Section 1407 allows a utility to require an occupant of a residential property to pay the unpaid balance that accrued on an account during the time the occupant resided there in order for service to be restored. This Section might be relevant if Mr. Clark had attempted to establish

service in his own name at 4839 Haverford Ave. after a balance had accrued. In such a case, Section 1407 would allow PECO to require Mr. Clark to pay the balance on the account before establishing service in his name. But that is not the situation in this case because Mr. Clark has never applied for service. Section 1407 does not relieve a landlord-account holder (such as Ms. Andrews) of responsibility for an unpaid balance on her account. If the Commission were to accept Ms. Andrews' argument under these circumstances, it would be authorizing and inviting unpaid utility services, because the account holder would be relieved of financial responsibility for the service, and there would be no one else to assign responsibility for the service.

Finally, Ms. Andrews' argument about the personal information that her tenants knew does not prove that one of them called to establish service in her name. Only one person would have any incentive to establish service in Ms. Andrews' name, and that is the second floor tenant Mr. Clark. Based on the service initiation call, it is obvious that it was not Mr. Clark who called. To the contrary, it is patently clear that it was Ms. Andrews herself who requested service in her own name, and now she is attempting to use the Commission's formal complaint process in order to avoid financial responsibility for the balance that accrued in her name.

II. Ms. Andrew's Allegations About Inaccurate Billing Were Never Raised in the Pleadings or at the Hearing and Therefore Should Not Be Considered.

Ms. Andrew's Brief includes an allegation that PECO's billing for her account at 7828 Chelwynde Avenue is inaccurate. This allegation was never pled by Ms. Andrews, she never raised this allegation during either hearing in this matter, and there is simply no evidence to support such an allegation. It is improper for this allegation to even be

considered by the ALJ or the Commission, because PECO was never provided with notice that Ms. Andrews was alleging that her billing was inaccurate, and therefore had no opportunity to respond to such an allegation. In any event, Ms. Andrews submitted no evidence or testimony in support of this allegation, and therefore there is no possible way that she could meet the burden of proof required for a finding in her favor on this issue.

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

Respectfully submitted,



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Dated: September 14, 2012

