

Exelon Business Services Company
2301 Market Street/S23-1
P.O. Box 8699
Philadelphia, PA 19101-8699

Direct Dial: 215.841.6841

September 21, 2012

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

Re: Linda Piekara v. PECO Energy Company
PUC Docket No.: C-2012-2323880

Dear Ms. Chiavetta:

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

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

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

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

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

LINDA PIEKARA	:	
Complainant	:	
v.	:	DOCKET NO. C-2012-2323880
	:	
PECO ENERGY COMPANY	:	
Respondent	:	

NOTICE TO PLEAD

Pursuant to 52 Pa. Code §§ 5.101 and 5.62(c), you are hereby notified that, if you do not file a written response denying or correcting the enclosed Preliminary Objection within 10 days from service of this notice, a ruling may be entered against you. Your response must be filed with the Secretary of the Pennsylvania Public Utility Commission, with a copy served to counsel for PECO Energy Company, Shawane L. Lee, and where applicable, the Administrative Law Judge presiding over the issue.

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

With a copy to:
Shawane L. Lee
PECO Energy Company
2301 Market Street, S-23
Philadelphia, PA 19103

Dated at Philadelphia, PA, September 21, 2012



Shawane L. Lee
PECO Energy Company
2301 Market Street, S-23
Philadelphia, PA 19103
(215) 841-6481
Shawane.Lee@exeloncorp.com

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

LINDA PIEKARA	:	
Complainant	:	
v.	:	DOCKET NO. C-2012-2323880
	:	
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**PRELIMINARY OBJECTION OF RESPONDENT,
PECO ENERGY COMPANY**

Respondent, PECO Energy Company (“PECO Energy”), pursuant to 52 Pa. Code § 5.101(a)(4) respectfully petitions this Honorable Commission to dismiss the instant Complaint as legally insufficient.

1. On September 13, 2012, PECO Energy was served with a formal complaint filed by Linda Piekara (hereafter “Complainant”).
2. In the Complainant’s formal complaint, she stated the reason for her complaint by checking the box “I want to oppose the company’s proposed rate increase.” See the Complainant’s formal complaint, attached hereto as Exhibit “1”.
3. In her formal complaint, the Complainant disputes the eventual elimination of PECO’s discounted OP rate.
4. Additionally, she disputes the fact that PECO Energy will not remove the OP meter at her premises or refund her money for installing the OP meter.
5. PECO Energy simultaneously filed an Answer and the instant Preliminary Objection.

6. Commission procedure regarding the disposition of preliminary objections is similar to that utilized in Pennsylvania civil procedure.²

7. In deciding preliminary objections, the Public Utility Commission must determine, based on the factual pleadings of the petitioner, if relief or recovery is possible.³

8. A complaint must be able to recover under the law to survive a preliminary objection.⁴

9. All of the non-moving party's averments must be taken as true for the sake of deciding the preliminary objection.⁵

10. The court does not, however, need to accept, "unwarranted inferences from facts, argumentative allegations, or expressions of opinions."⁶

11. Section 703 of the Public Utility Code, 66 Pa.C.S.A. § 703(b) provides that the Commission may dismiss any complaint without a hearing if, in its opinion, a hearing is not necessary in the public interest.

12. A hearing is required only when there is a disputed question of fact, and is not required to resolve questions of law. *Dee-Dee Cab, Inc. v. Pa.Pub. Util. Comm'n*, 817 A.2nd 593 (Pa.Commw. Ct. 2003), petition for allowance of appeal denied, 836 A.2d 123 (Pa. 2003).

13. Here, there are no genuine issues of fact and PECO Energy is entitled to judgment as a matter of law. Therefore, the complaint is legally insufficient and should be dismissed.

² *Equitable Small Transportation Interveners v. Equitable Gas Co.*, 1994 Pa.PUC LEXIS 69, Docket No. C-00935435 (July 18, 1994)

³ 2006 Pa. PUC Lexis 111, *7.

⁴ *Milliner v. Enck*, 709 A.2d 417, 418 (Pa. Super. Ct. 1998) ("preliminary objection should be sustained only where it appears with certainty that, upon the facts averred, the law will not allow the plaintiff to recover").

⁵ *Id.* at 7-8.

⁶ *Feingold v. McNulty*, 2009 Phila. Ct. Com. PI LEXIS 167, *3.

14. The Complainant disputes the phase out of PECO Energy's OP rate. The elimination of PECO Energy's OP rate was approved by the Commission as part of PECO's Default Service Program and Rate Mitigation Plan on June 9, 2009, docket number P-2008-2062739. The plan was previously approved by the Commission and is just, reasonable and lawful.

15. By way of background, in 1996 the Pennsylvania General Assembly enacted the Electricity Generation Customer Choice and Competition Act (Act), 66 Pa.C.S. §§2801-15. The Act allows Pennsylvanians to buy electric generation supply from licensed alternative suppliers by unbundling the generation portion of electric rates from the transmission and distribution portions.

16. The Act capped the generation portion of electric rates to ease the transition to competitive markets at 1996 levels. The rate cap was initially established under Section 2804 of the Act, and, after much litigation, settlements were reached in which the rate cap would expire for all PECO customers at the end of 2010.⁷

17. On September 10, 2008, PECO Energy filed its Default Service Program and Rate Mitigation Plan (DSP Petition) to establish rates, terms and conditions for the provision of default service for the period of January 1, 2011 through May 31, 2014, for those customers who do not take service from an alternative electric generation supplier (EGS) or whose contracted generation is not delivered.

18. PECO Energy's DSP plan is designed to ensure that PECO's default service customers have access to a reliable supply of generations and to help them manage the

⁷ The Commission has already ruled that it lacks the authority to extend the expired rate caps. See *Tshundy v. PPL Electric Utilities Cor.*, Docket No. C-2009-2092230 (Order entered August 21, 2009)(citing 66 Pa.C.S. 2804(4)).

transition from capped generation rates to market-priced rates that were to occur on January 1, 2011. PECO's DSP Petition was assigned Commission Docket P-2008-2062739.

19. The phase out of the residential OP was included as part of PECO's DSP Plan.

20. After extensive discovery, hearings, and the filing of testimony and rebuttal testimony in this matter, on March 10, 2009, a Joint Petition for Settlement was filed to request approval of PECO's DSP Plan as modified by the settlement.

21. By Order entered June 2, 2009 the Commission approved the Settlement and PECO's DSP Plan, as modified by the settlement.

22. The Commission has only those duties, powers, responsibilities and jurisdiction that were expressly or by necessary implication given to it by the Legislature. *Rogoff v. The Buncher Company*, 395 Pa. 477, 151 A.2d 83 (1959).

23. As the Commission recognized in *Tshundy v. PPL Electric Utilities Corp.*, Docket No. C-2009-2092230 (Order entered August 21, 2009), the Commission may not extend the rate caps, which expired in 2010, in order to prevent a generation rate increase.

24. Additionally, the Competition Act provides that default service rates must be based on prevailing market prices, not promotional discounts or subsidies; offering reduced rates for winter heating customers would require other default service customers to subsidize the Rate OP customers to cover the difference, and therefore would violate the Public Utility Code.

25. Commission precedent is clear and unambiguous on this issue. In *Dunham v. PPL Electric Utilities Corporation*, Docket No. C-2010-2155056, the Commission stated:

In *Diehl v. PPL Electric Utilities Corporation*, Docket No. C-2009-2149261 (Order entered April 1, 2011) (*Diehl*), we discussed the circumstances surrounding PPL's phase out of the RTS rate schedule:

In 2004, at Docket No. R-00049255, PPL filed a distribution rate case with the Commission. The Commission's decision in that case on rate allocation among customer classes was appealed to the Commonwealth Court. As part of its review, the Commonwealth Court interpreted the Competition Act as requiring that rates for transmission, distribution and generation each be set separately, based on the cost of serving each separate class of customers. 66 Pa. C.S. § 2804(3). The Court ruled that subsidized rates (*e.g.*, the RTS rate) which do not cover their costs of service must be transitioned to cost-based rates. *See, Lloyd v. Pennsylvania Public Utility Commission, et al.*, 904 A.2d 1010 (Pa. Cmwlth. 2006). Thus, the RTS rate as it existed in the 1980s, at the time the Complainant constructed his home, could no longer continue to be offered.

1. *Diehl* at 4-5.

Dunham Opinion and Order, entered July 1, 2011, at 4.

26. Similar conclusions were reached in several complaints before the Commission. See also, *Kupchinskis v. PECO Energy Company*, Docket No. C-2011-2253896; *Herting v PPL Electric Utilities Corporation*, Docket No. C-2010-2153688, Commission Final Order entered October 6, 2011; *Brickner v PPL Electric Utilities Corporation*, Docket No. C-2009-2105583, Commission Opinion and Order entered May 21, 2010; *Laudenslager v. Duquesne Light Company*, Docket No. C-2010-2156300, Commission Final Order entered June 29, 2011; *Sowatskey v Duquesne Light Company*, Docket No. C-2009-2144804, Commission Final Order entered January 11, 2011.

27. As the instant case involves the same legal question, the outcome should be the same. The complaint should be dismissed as legally insufficient under 52 Pa.Code §5.101(a)(4).

28. Additionally, the Complainant requests that PECO Energy refund her money for installing the OP meter.

29. In effect, Complainant is requesting that the Commission award her damages for the costs she incurred to install an OP meter at her home.

30. Assuming all of the Complainant's allegations are true, the Complainant is not entitled to relief under the law.

31. The Commission lacks jurisdiction to award damages pursuant to 52 Pa. Code § 5.101(a)(1).

32. The only remaining purported infractions in the Complainant's formal complaint relates to PECO Energy's responsibility to refund the Complainant's money arising from the installation of an OP meter.

33. Because the sole remaining basis of Complainant's Complaint is to seek compensation for the costs she incurred for installing the OP meter, her request should be denied pursuant to 52 Pa. Code § 5.101(a)(1) and her complaint dismissed in its entirety.

REQUEST FOR RELIEF

WHEREFORE, for all of the reasons stated herein, PECO respectfully requests that your Honorable Commission dismiss the instant complaint with prejudice.

Respectfully submitted,



Shawane L. Lee
Counsel for PECO Energy Company
2301 Market Street, S23-1
P.O. Box 8699
Philadelphia, PA 19101-8699
(215) 841-6841
Fax: 215.568.3389
Shawane.Lee@exeloncorp.com

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

LINDA PIEKARA	:	
Complainant	:	
v.	:	DOCKET NO. C-2012-2323880
	:	
PECO ENERGY COMPANY	:	
Respondent	:	

VERIFICATION

I, Shawane L. Lee, hereby declare that I am counsel for PECO Energy Company; that as such I am authorized to make this verification on its behalf; that the facts set forth in the foregoing Pleading are true to the best of my knowledge, information and belief, and that I make this verification subject to the penalties of 18 Pa. C.S. § 4904 pertaining to false statements to authorities.



Date: September 21, 2012

Shawane L. Lee

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

LINDA PIEKARA	:	
Complainant	:	
v.	:	DOCKET NO. C-2012-2323880
	:	
PECO ENERGY COMPANY	:	
Respondent	:	

CERTIFICATE OF SERVICE

I, Shawane L. Lee, hereby certify that I have this day served a copy of PECO Energy Company's Answer in the above matter upon all interested parties by mailing a copy, properly addressed and postage prepaid to:

Linda Piekara
1235 South Valley Forge Road
Lansdale, PA 19446

Dated at Philadelphia, Pennsylvania, September 21, 2012



Shawane L. Lee
Counsel for PECO Energy Company
2301 Market Street, S23-1
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Philadelphia, PA 19101-8699
(215) 841-6841
Fax: 215.568.3389
Shawane.Lee@exeloncorp.com

Legal Department

Fax 215.568.3389
www.exeloncorp.com

Exelon Business Services Company
2301 Market Street/523-1
P.O. Box 8699
Philadelphia, PA 19101-8699

Direct Dial: 215 841-6841

September 21, 2012

Linda Piekara
1235 South Valley Forge Road
Lansdale, PA 19446

Re: Linda Piekara v. PECO Energy Company
PUC Docket No. : C-2012-2323880

Dear Ms. Piekara:

Enclosed is a copy of PECO Energy Company's response to the formal complaint filed in the above-referenced docket. The law requires PECO Energy to file an answer to your Public Utility Commission complaint. Keep these papers for your records. This is not a decision on your complaint. PECO's response may include a New Matter, Motion or Preliminary Objection. Please note that if you do not respond to a New Matter, Motion, or Preliminary Objection an unfavorable decision may be rendered against you. Responses to New Matters and Motions must be filed within 20 days. Responses to Preliminary Objections must be filed within 10 days. If there is no New Matter, Motion or Preliminary Objection included, no response is required.

Soon, the Public Utility Commission will schedule either a settlement conference or a hearing on your complaint. The Commission will let you know by mail whether there will be a conference or a hearing and will include instructions on what to do next. If the matter is set for hearing, the notice will provide you with information about the date, time and place of the hearing. If we are unable to resolve your complaint and have to proceed with a hearing, a judge will be at the hearing and will decide your complaint. You must call the Public Utility Commission if you have any questions about the hearing or if you cannot attend the hearing.

Thank you for your time and attention on this matter.

Very truly yours,



Shawane Lee
Counsel for PECO Energy Company

Enc.
SL/lo

EXHIBIT “1”

PENNSYLVANIA PUBLIC UTILITY COMMISSION

Formal Complaint Form

Please print in ink or type.

CASE NO: 2917978

1. CUSTOMER (COMPLAINANT) INFORMATION

Your name, mailing address, county, telephone number, utility account number and service address:

Name LINDA PIEKARA

Street/P.O. Box 1235 S. VALLEY FORGE RD Apt #

City LANSDALE State PA Zip 19446

County MONTGOMERY

Daytime Telephone Number Where We Can Contact You: 215 361-2568

E-mail Address (optional):

Utility Account Number (from your bill) 05058-01107

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 - EXELON COMPANY

3. TYPE OF UTILITY (check one)

[X] ELECTRIC

[] GAS

[] WATER

[] TELEPHONE (local, long distance)

[] STEAM HEAT

[] WASTE WATER

[] MOTOR CARRIER

(e.g., taxi, moving company, limousine)

RECEIVED 2012 AUG 20 AM 10:53 PA P.U.C. SECRETARY'S BUREAU

RECEIVED 2012 SEP 10 AM 11:05 PA P.U.C. SECRETARY'S BUREAU

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.

Around 1993, PECO was advertising a Peak Meter through their approved licensed electricians, I had one installed, as I thought, would help me during my upcoming retirement. I can't find the papers, but I seem to remember, it was \$500.00. PECO must have records of my purchase of a Peak Meter that is installed in the front of my house. Since its installation, I have learned to use my appliances during off peak times, as you could not use them during 1:30 pm to 7:30 pm and I saved money on my electric bill. Now as a senior citizen, you are discontinuing the Peak Meter, and my electric bill is and will be 40% higher, and you are not going to restore the damage to the front of my house with a 2nd meter. I am also getting daily phone calls to save (over)

MONEY ON THE NEW DEREGULATION, I SIGNED UP
IN 1993 FOR A PEAK METER, PAID FOR IT, AND
NOW IT IS DISCONTINUED. CALLED PECO TO COMPLAIN

5. RELIEF

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

Called PECO; THEY WILL NOT DO ANYTHING AS FAR AS REMOVING METER OR REFUND AS I THOUGHT AS LONG AS I LIVED HERE I WOULD HAVE THE PEAK METER RATES. NOW MY ELECTRIC BILL IS ALMOST 40% HIGHER, AND WAS TOLD IT IS PA PUBLIC UTILITY COMMISSION'S FAULT, AND I AM UPSET.

RESTORE MY PEAK METER AND LAST YEAR'S RATES.

I AM USING LESS ENERGY, BILL ATTACKED FOR USAGE PROFILE, BUT MY COSTS ARE ALMOST 40% HIGHER.

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 _____

Street _____

City _____ State _____ Zip _____

Area Code/Phone Number _____

E-mail Address (If Known) _____

9. **VERIFICATION AND SIGNATURE**

Name: LINDA PIEKARA
Account Number: 05058-01107

Page 2

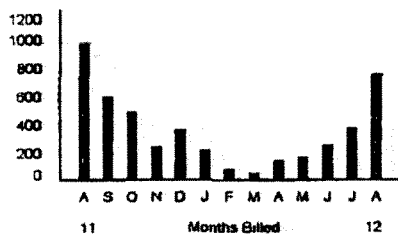
Meter Information								
Read Date	Meter Number	Load Type	Reading Type	Meter Reading		Difference	Multiplier X	Usage
				Previous	Present			
08/01	107368424	General Service	Tot kWh	253 Actual	1318 Actual	1063	1	1063
08/01	107368429	General Service	Tot kWh	28696 Actual	29444 Actual	748	1	748

Total kWh Used 748
Total kWh Used 1,063

Electric Off-Peak Service - Current Period Detail **Service 07/02/2012 to 08/01/2012 - 30 days**

Customer charge					\$1.75
Generation Charges	748 kWh	X	\$0.04900		36.65
All. Energy Portfolio Standard	748 kWh	X	0.00070		0.52
Transmission Charges	748 kWh	X	0.00740		5.54
Distribution Charges	748 kWh	X	0.06050		45.25
State Tax Adjustment					-0.02
Total Current Charges					\$89.69

13-Month Usage (Total kWh)



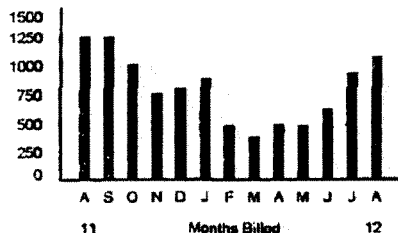
Your Usage Profile

Period	Usage	Avg Daily Usage	Days	Avg Daily Temp
Current Month	748	24.9	30	81
Last Month	372	12.8	29	74
Last Year	972	33.5	29	83
Avg kWh per Month				308
Total Annual kWh Usage				3,701

Electric Residential Service - Current Period Detail **Service 07/02/2012 to 08/01/2012 - 30 days**

Customer charge					\$7.17
Generation Charges	500 kWh	X	\$0.07830		39.15
Generation Charges	563 kWh	X	0.08360		47.07
All. Energy Portfolio Standard	1,063 kWh	X	0.00070		0.74
Transmission Charges	1,063 kWh	X	0.00740		7.87
Distribution Charges	1,063 kWh	X	0.06000		63.78
State Tax Adjustment					-0.04
Total Current Charges					\$165.74

13-Month Usage (Total kWh)



Your Usage Profile

Period	Usage	Avg Daily Usage	Days	Avg Daily Temp
Current Month	1,063	35.4	30	81
Last Month	920	31.7	29	74
Last Year	1,249	43.0	29	83
Avg kWh per Month				757
Total Annual kWh Usage				9,095



DO NOT MAIL THIS PORTION WITH YOUR PAYMENT





