

Legal Department

Exelon Business Services Company
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September 26, 2012

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

**Re: Selena Ricks for Mortgage Shoppers Financial, Inc. v.
PECO Energy Company
PUC Docket No.: C-2012-2325257**

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
X	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**

SELENA RICKS FOR MORTGAGE	:	
SHOPPERS FINANCIAL, INC.	:	
Complainant	:	
	:	
v.	:	DOCKET NO. C-2012-2325257
	:	
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 26, 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**

SELENA RICKS FOR MORTGAGE	:	
SHOPPERS FINANCIAL, INC.	:	
Complainant	:	
	:	
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	:	
PECO ENERGY COMPANY	:	
Respondent	:	

**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 20, 2012, PECO Energy was served with a formal complaint filed by Mortgage Shoppers Financial, Inc. (hereafter “Complainant”).

2. In the formal complaint, the Complainant requests a payment agreement. See Formal Complaint, attached hereto as Exhibit “1”.

3. Specifically, in the Complainant’s request for relief, the Complainant states:

I’m hoping that PUC can order PECO to give me a payment agreement and turn my electric back on. At which time I can pay \$453 of the of the (sic) \$2,453 owed and make monthly payments of \$165 plus the current bill for 12 months until the balance is paid in full.

4. PECO Energy simultaneously filed an Answer and the instant Preliminary Objection.

5. Commission procedure regarding the disposition of preliminary objections is similar to that utilized in Pennsylvania civil procedure.¹

6. In deciding preliminary objections, the Public Utility Commission must determine, based on the factual pleadings of the petitioner, if relief or recovery is possible.²

7. A complaint must be able to recover under the law to survive a preliminary objection.³

8. All of the non-moving party's averments must be taken as true for the sake of deciding the preliminary objection.⁴

9. The court does not, however, need to accept, "unwarranted inferences from facts, argumentative allegations, or expressions of opinions."⁵

10. 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).

11. Here, the facts in this matter include the following:

- a. The Complainant alleges that Mortgage Shoppers Financial, Incorporated is a business.
- b. The Complainant alleges that Mortgage Shoppers Financial, Inc. operated at the premises located at 2829 Edgmont Avenue, Chester, PA 19015.

¹ *Equitable Small Transportation Interveners v. Equitable Gas Co.*, 1994 Pa.PUC LEXIS 69, Docket No. C-00935435 (July 18, 1994)

² 2006 Pa. PUC Lexis 111, *7.

³ *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").

⁴ *Id.* at 7-8.

⁵ *Feingold v. McNulty*, 2009 Phila. Ct. Com. Pl LEXIS 167, *3.

- c. The Complainant alleges that Mortgage Shoppers Financial had electric service with PECO Energy at 2829 Edgmont Avenue, Chester, PA 19015.
- d. The Complainant lists on the formal complaint that the utility account number at issue is electric commercial service account number 61615-00900. See Exhibit “1”.
- e. The Complainant requested a payment agreement from PECO Energy for the balance incurred for service at 2829 Edgmont Avenue; however, it was denied.
- f. The Complainant requests that the PUC order PECO Energy to give the Complainant a payment agreement.

12. In effect, the sole basis of the Complainant’s formal complaint is a request for the Commission to order PECO Energy to issue a payment agreement.

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

14. It is well-established law that commercial customers are not entitled to the payment agreement provisions codified under of 66 Pa.C.S §1405 and 52 Pa. Code.Chp 56.

15. While the Commission is authorized under the Public Utility Code to establish payment arrangements that provide for the eventual payment of a residential customer’s entire outstanding balance, Mill v. Pa. Public Utility Commission, 67 Pa. Commonwealth Ct. 597, 602, n. 4, 447 A.2d. 1100 (1982), neither the Commission’s regulations nor the Public Utility Code establishes a similar right for a commercial or industrial customer.

16. In this case, the Complainant is a corporation and commercial customer, requesting a payment agreement on an outstanding balance.

17. The sole basis of the Complainant's complaint is a request for a payment agreement.

18. Accordingly, the Complainant's complaint should be dismissed as the PUC has no jurisdiction to order PECO Energy to give the Complainant a payment agreement.

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

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	:	
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	:	
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 26, 2012

Shawane L. Lee

Legal Department

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Business Services
Company

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

Direct Dial: 215 841-6841

September 26, 2012

Mortgage Shoppers Financial, Inc.
ATTN: Selena Ricks
2829 Edgmont Avenue
Chester, PA 19015

**Re: Selena Ricks for Mortgage Shoppers Financial, Inc.
v. PECO Energy Company
PUC Docket No. : C-2012-2325257**

Dear Ms. Ricks:

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.

1. CUSTOMER (COMPLAINANT) INFORMATION

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

Name: SELENA RICKS- MORTGAGE SHOPPERS FINANCIAL, INC.

Street/P.O. Box 2829 EDMONT AVENUE Apt #

City CHESTER State PA Zip 19015

County DELAWARE

Daytime Telephone Number Where We Can Contact You: (267) 991-4995

E-mail Address (optional): MSFMTG@AOL.COM

Utility Account Number 61615-00900 (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)

X ELECTRIC

STEAM HEAT

GAS

WASTE WATER

WATER

MOTOR CARRIER

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

TELEPHONE (local, long distance)

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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.

I WAS THE OWNER OF MORTGAGE SHOPPERS FINANCIAL, INC. AT THE ABOVE ADDRESS. THE BUSINESS WENT UNDER IN JANUARY 2008 WHICH LEFT ME UNEMPLOYED AND WITHOUT AN INCOME FOR THREE YEARS AND WITH UNPAID BILLS THAT INCLUDING MY RENT AND ELECTRIC. IN NOVEMBER 2010 I ESTABLISHED A NEW COMPANY AT THE SAME LOCATION. SINCE STARTING THAT BUSINESS MY RENT WAS PARTIALLY PAID UP BUT I STILL OWE \$3,000 BACK RENT. MY RENT IS \$500 A MONTH WHICH I'M CURRENTLY PAYING. AS FOR THE ELECTRIC BILL, I DIDN'T THINK PECO WOULD ACCEPT ANY PAYMENTS OR A PAYMENT ARRANGEMENT ON THE OUTSTANDING BILL. SO I JUST NEVER PAID IT BECAUSE I THOUGHT IF I CONTACTED PECO AT THIS POINT THEY WOULD SHUT-OFF THE ELECTRIC BECAUSE THE AMOUNT OWED.

5. RELIEF

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

HOW THAT THE ELECTRIC HAS BEEN SHUT-OFF, I CONTACTED PECO FOR PAYMENT ARRANGEMENTS AND WAS DENIED. SO I'M HOPING THAT PUC CAN ORDER PECO TO GIVE ME A PAYMENT AGREEMENT AND TURN MY ELECTRIC BACK ON. AT WHICH TIME I CAN PAY \$453 OF THE OF THE \$2,453 OWED AND MAKE MONTHLY PAYMENTS OF \$165 PLUS THE CURRENT BILL FOR 12 MONTHS UNTIL THE BALANCE IS PAID IN FULL.

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

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 SELENA RICKS 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).

Seleena Ricks
(Signature)

September 7, 2012
(Date)

Owner
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
2012 SEP 13 AM 10:32
PA P.U.C.
SECRETARY'S BUREAU

RICKS
544-A1 Chester PA
Norwood PA 19074

PHILADELPHIA PA 191

11 SEP 2012 PM 10:1



PA P.U.C.
SECRETARY'S BUREAU

2012 SEP 13 AM 10:31

RECEIVED

Secretary
Pennsylvania Public Utility Commission
P.O. Box 3265
HARRISBURG PA 17105-3265

17105326565

