

**Legal Department**

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October 16, 2012

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

**Re: Nadir Asadi v. PECO Energy Company**  
**PUC Docket No.: F-2012-2328774**

Dear Ms. Chiavetta:

Enclosed for filing with the Commission are the following documents 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 X

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

<b>NADIR ASADI</b>	:	
<b>Complainants</b>	:	
<b>v.</b>	:	<b>DOCKET NO. F-2012-2328774</b>
	:	
<b>PECO ENERGY COMPANY</b>	:	
<b>Respondent</b>	:	

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**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, October 16, 2012



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

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

<b>NADIR ASADI</b>	:	
<b>Complainants</b>	:	
<b>v.</b>	:	<b>DOCKET NO. F-2012-2328774</b>
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<b>Respondent</b>	:	

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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 August 29, 2012, PECO Energy was served with a formal complaint filed by Nadir Asadi (hereafter “Complainant”). A copy of the Complaint is attached hereto as Exhibit “1”.

2. In his Complaint, Complainant alleges that on May 15, 2012, a PECO Energy technician went to the Complainant’s rental property at 6054 Kingsessing Avenue, Philadelphia, PA and determined that there was a foreign wiring condition at the premises. See Exhibit “1”.

3. The Complainant alleges that the technician advised him the bill would be placed into the Complainant’s name until the condition was corrected, at which time the bill would be placed back into the tenant’s name. See Exhibit “1”.

4. The Complainant requests that the original bill amount be placed back into the tenant’s name. See Exhibit “1”.

5. PECO Energy simultaneously filed an Answer and the instant Preliminary Objection.
6. Pursuant to 52 Pa. Code § 5.101, preliminary objections may be filed against a complaint and dismissed for legal insufficiency. 52 Pa. Code § 5.101(a)(4).
7. Commission procedure regarding the disposition of preliminary objections is similar to that utilized in Pennsylvania civil procedure.<sup>1</sup>
8. In deciding preliminary objections, the Public Utility Commission must determine, based on the factual pleadings of the petitioner, if relief or recovery is possible.<sup>2</sup>
9. A complaint must be able to recover under the law to survive a preliminary objection.<sup>3</sup>
10. All of the non-moving party's averments must be taken as true for the sake of deciding the preliminary objection.<sup>4</sup>
11. The court does not, however, need to accept, "unwarranted inferences from facts, argumentative allegations, or expressions of opinions."<sup>5</sup>
12. 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 of, in its opinion, a hearing is not necessary to the public interest.

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

<sup>2</sup> 2006 Pa. PUC Lexis 111, \*7.

<sup>3</sup> *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").

<sup>4</sup> *Id.* at 7-8.

<sup>5</sup> *Feingold v. McNulty*, 2009 Phila. Ct. Com. Pl LEXIS 167, \*3.

13. 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.2<sup>nd</sup> 593 (Pa.Commw. Ct. 2003), petition for allowance of appeal denied, 836 A.2d 123 (Pa. 2003).

14. Here, there are no genuine issues of fact and PECO Energy is entitled to judgment as a matter of law with respect to all of the allegations in the Complaint.

15. The Commission has held that a landlord must pay the utility for any account balance, including arrearages, once a foreign load or wiring has been found. 66 Pa. C.S. §§ 1529.1(a), (c); and Ace Check Cashing Inc. v. Phila. Gas Works, Final Order, (May 21, 2010). See also Santos v. Metro. Edison Co., No. C-00967757 (Pa. P.U.C. Aug. 7, 1997).

16. The Complainant is the owner of 6054 Kingsessing Avenue, 1<sup>st</sup> Floor, Philadelphia, PA. See Complaint at page 4.

17. The Complainant avers that PECO transferred the arrearage and current charges into his name, which he maintains should be the responsibility of the tenant. See Complaint at page 5.

18. The Complainant seeks the following relief:

The original amount be returned to the rightful owner of this bill pursuant to the statement of the PECO rep. Attached copy of letter.

19. The letter the Complainant refers to in his request for relief, which is attached to his complaint is from PECO Energy dated May 18, 2012. The letter states:

When PECO identifies foreign wiring. Pennsylvania State Law requires the electric service to be transferred into the name of the landlord, until the wiring is properly corrected. (Per Section 1529.1(b) of the Pennsylvania Public Utility Code, 66 Pa.C.S. 1529.1)

Please be advised that the electric service for the accounts in question will be transferred into your name effective immediately. If any of the current tenant's

balance due is attributable to the found foreign wiring the entire balance will be transferred into your name as well. The service can only go back into your tenants name if you have your electrician correct the wiring for each apartment.

See Complaint at page 8.

20. As previously explained by the Legislature and this Commission, upon discovering the existence of a foreign load a public utility is required to list the account, including any arrearages, in the name of the landlord. 66 Pa. C.S. §§ 1529.1(a), (c). See also Santos v. Metro. Edison Co., No. C-00967757 (Pa. P.U.C. Aug. 7, 1997). The landlord is responsible for paying the utility bills until the foreign load is corrected. Santos at 16. Once the foreign load is corrected by the landlord and verified by the utility, the utility will place the account back in the name of the tenant and the arrearage, if any, will remain the landlord's responsibility. Id. To the extent any dispute regarding the financial responsibility of the parties exists, that is a matter to be resolved in the Court of Common Pleas as it is outside the Commission's jurisdiction. Edmund v. Corazzini v. UGI Penn Natural Gas, Inc., No. F-2009-2101282, Opinion and Order adopted July 15, 2010 at 7.

21. The Complainant does not allege that the property is not a rental property or that he is not the owner of the property.

22. The Complainant does not allege that PECO Energy incorrectly determined a foreign wiring condition at his property.

23. The Complainant does not allege that PECO Energy transferred an incorrect amount to his account.

24. The Complainant's Complaint simply alleges that foreign wiring was found at his property and he wants the balance returned to the rightful owner of the balance – the tenant.

25. Because the Complaint relates to a dispute about the assignment of financial responsibility for foreign load in a building he owns, PECO Energy properly transferred the tenant's utility account, including arrearages, to the Complainant's name.

26. PECO Energy's actions are consistent with Pennsylvania law.

27. Accordingly, PECO Energy requests that the Commission dismiss the Complaint for legal insufficiency.

**REQUEST FOR RELIEF**

WHEREFORE, for the reasons set forth above, PECO Energy Company respectfully requests that your Honorable Commission summarily dismiss the Complainants' Complaint.

Respectfully submitted,



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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**

<b>NADIR ASADI</b>	:	
<b>Complainants</b>	:	
<b>v.</b>	:	<b>DOCKET NO. F-2012-2328774</b>
	:	
<b>PECO ENERGY COMPANY</b>	:	
<b>Respondent</b>	:	

**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: October 16, 2012

\_\_\_\_\_  
Shawane L. Lee

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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v.	:	<b>DOCKET NO. F-2012-2328774</b>
	:	
<b>PECO ENERGY COMPANY</b>	:	
<b>Respondent</b>	:	

**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:

Nadir Asadi  
361 East Chestnut Street  
Coatesville, PA 19320

Dated at Philadelphia, Pennsylvania, October 16, 2012



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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

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

Direct Dial: 215 841-6841

October 16, 2012

Nadir Asadi  
361 East Chestnut Street  
Coatesville, PA 19320

**Re: Nadir Asadi v. PECO Energy Company**  
**PUC Docket No. : F-2012-2328774**

Dear Mr. Asadi:

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”**

*Timely*

Must be returned by October 2, 2012

PENNSYLVANIA PUBLIC UTILITY COMMISSION

Formal Complaint Form

Please print or type.

1. CUSTOMER NAME (COMPLAINANT)

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

Name NADIR ABADI

Street/P.O. Box 361 E. Chestnut St Apt # \_\_\_\_\_

City Coatesville State Pa Zip 19320

County Chester

Area Code/HOME Phone 215-651-0818

Area Code/WORK Phone \_\_\_\_\_

Utility Account Number 84306-01039  
(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 6054 Kingessing Ave 1st Floor

City Phila State Pa Zip 19142-2425

2. UTILITY NAME (RESPONDENT)

Name of utility company your complaint concerns: PECO

3. TYPE OF UTILITY (check one)

- ELECTRIC
- GAS
- WATER
- TELEPHONE  
(local, long distance)
- STEAM HEAT
- WASTE WATER
- MOTOR CARRIER  
(taxi, moving company, limo, busines)

RECEIVED  
 2012 OCT - 2  
 2 11  
 AM 9:42  
 PA P.U. 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.

ON 5-16-12 a Pozo rep was @ 6054 Kingsessing Ave  
for excessive bill @ that time it was determined that  
there was foreign wiring, related to the porch and that  
the bill would be placed in my name until the  
problem was corrected and when the problem was  
corrected the bill would be placed back into the  
original tenants name.

5. RELIEF

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

The original amount be returned to the  
 rightful owner of the bill pursuant to  
 the statement of the Pozo rep.

Attached copy of letter



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, NASIR AZADI, 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] (Signature) 9-29-12 (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 <sup>nd</sup> 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 OCT -5 AM 9:42  
PA P.U.C.  
SECRETARY'S BUREAU

Case # 2972063



www.exeloncorp.com

An Exelon Company

PECO Energy Company  
2301 Market Street, N2-4  
Philadelphia, PA 19101

May 18, 2012

Asadi Nadir  
361 E Chestnut St  
Coatesville, Pa 19320

Regarding 6054 Kingsessing Ave  
1<sup>st</sup> Fl  
Philadelphia, Pa 19142

Dear Sir:

On 5-16-12 a PECO field technician visited the above referenced property in response to a high bill complaint. The technician found the common porch light connected to the 1<sup>st</sup> floor meter. This is known as foreign wiring. Please have your electrician check for any additional foreign wiring that may not have been detected at the time of the field visit.

When PECO identifies foreign wiring, Pennsylvania State Law requires the electric service to be transferred into the name of the landlord, until the wiring is properly corrected. (Per Section 1529.1(b) of the Pennsylvania Public Utility Code, 66 Pa. C.S. 1529.1)

Please be advised that the electric service for the accounts in question will be transferred into your name effective immediately. If any of the current tenant's balance due is attributable to the found foreign wiring, the entire balance will be transferred into your name as well. The service can only go back into your tenants name if you have your electrician correct the wiring for each apartment.

If you have completed the repairs, or have any questions regarding this matter, please telephone 215-841-6594.

Cordially,  
Mary McQuilkin  
High Bill Field